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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsch, et al.,

Plaintiffs,

v.

Arthur Noot, et al.,

Defendants.

Paragraph 40(e) MONITOR

FINDINGS OF FACT AND
RECOMMENDATIONS

No. 4-72 Civil 451

On November 25, 1980, the undersigned court appointed monitor for the 1977 Cambridge Consent Decree, held an evidentiary hearing pursuant to paragraph 40(e) of the Cambridge Decree.

Luther A. Grandquist and Michael Fargione, 222 Grain Exchange Building, 323 Fourth Avenue South, Minneapolis, Minnesota appeared as counsel on behalf of the Plaintiffs, and P. Kenneth Kohnstamm, Special Assistant Attorney General, 515 Transportation Building, St. Paul, Minnesota appeared on behalf of the Defendants.

STATEMENT OF ISSUES

The issues for determination involve claims by the Plaintiffs that certain actions already taken and others planned by the Defendants relating to salary account reductions for Cambridge State Hospital constitute non-compliance with the 1977 Cambridge Consent Decree, the June, 1980 Stipulation between the parties and to the extent applicable, the 1980 Consent Decree. The specific actions taken or planned by the Defendants which the Plaintiffs challenge have been set forth by the Plaintiffs as follows:

- A. Are the following actions taken by the Defendants consistent with paragraphs 14 and (with respect to items (1) and (2), below) paragraph 59 of the Cambridge State Hospital Consent Decree and the Stipulation entered into by the parties to this action relating to that Consent Decree at a hearing before the Monitor on June 16, 1980?
 1. The reduction of \$48,613.00 in the MR salary account for Cambridge State Hospital effected in September, 1980 in response to directives from the Governor and the Department of Finance that the Department of Public Welfare must reduce expenditures during

fiscal year 1981 by \$3.3 million.

2. The reduction of \$27,727.00 in the GS salary account for Cambridge State Hospital effected in September, 1980 in response to directives from the Governor and the Department of Finance that the Department of Public Welfare must reduce expenditures during fiscal year 1981 by \$3.3 million.
3. The reduction of \$19,375.00 in the MR salary account for Cambridge State Hospital effected in October, 1980 as a result of the allocation by the Department of Public Welfare to each state hospital with residents who are mentally retarded of a portion of the \$100,000.00 paid by the Department of Public Welfare for Plaintiffs' attorneys fees in accordance with paragraph 108 of the 1980 Consent Decree approved by the Court on September 15, 1980.
4. The requirement of the Department of Public Welfare that the salary of Al Beck, an employee of the Department who works at the central office and not at Cambridge State Hospital, be paid out of the salary accounts of Cambridge State Hospital.

B. Are the following actions planned by the Defendants consistent with paragraph 14 of the Cambridge State Hospital Consent Decree approved by the Court on December 28, 1977 and the Stipulation entered into by the parties to this action relating to that Consent Decree at a hearing before the Monitor on June 16, 1980?

1. A reduction in the salary accounts for Cambridge State Hospital to defray a part of the cost entailed in employing three persons in technical assistance positions to fulfill the requirements of paragraph 28 through 33 of the 1980 Consent Decree.
2. A reduction in the salary accounts for Cambridge State Hospital to defray a part of the cost for employment of a monitor to fulfill the requirements of Part VIII of the 1980 Consent Decree.
3. A reduction in the salary accounts for Cambridge State Hospital to defray a part of the litigation costs incurred by the Department of Public Welfare in defense of this action during the proceedings before the United States District Court during 1980.

The common issue presented by the Plaintiffs in challenging the above actions is whether the Defendants may reduce the salary accounts for Cambridge State Hospital in order to meet obligations which do not directly involve the employment of personnel at that Hospital. While the Plaintiffs assert that such reductions constitute a violation of the Decree and prior Stipulation, the Defendants submit that its actions do not constitute such violations and that since the Plaintiffs have not demonstrated a diminution of care and treatment for Cambridge residents the Defendants' actions are appropriate under the circumstances.

FINDINGS OF FACT

A. Procedural Background

1. The present action was initiated in 1972 on behalf of mentally retarded citizens civilly committed to various Minnesota state hospitals. Following subsequent litigation regarding Cambridge State Hospital which resulted in court orders relating to staffing, practices and conditions at Cambridge State Hospital, a Consent Decree relating to the Cambridge State Hospital was entered on December 28, 1977. Pursuant to paragraph 40(e) of said Decree the court appointed Monitor was empowered to conduct an evidentiary hearing when a party has requested a hearing and in the judgment of the Monitor, it would be of assistance in resolving disputes between the parties regarding the implementation of the Decree. The Monitor was further empowered to file with the Court recommended findings of fact based on the evidence presented and to submit copies of said findings to counsel for the parties.

2. In June, 1979, the Plaintiffs presented to the Monitor in an evidentiary hearing questions regarding the proper construction of the term "full-time equivalent positions" applied in paragraph 14 of the 1977 Decree. The Findings of Fact and Recommendations of the Monitor were issued on October 9, 1979. (See Appendix A). The Monitor found that the parties had agreed that a full-time equivalent position is "a position which is comparable in scope to a state complement position for which funding is guaranteed." (Findings of Fact, paragraph 6). The Monitor concluded that "full-time equivalent positions" should be so defined, that two intermittent positions could continue to be utilized so long as "the Department guarantees sufficient funding," and that CETA Public Service positions should not be relied upon to meet the mandates of paragraph 14. (Conclusions and Recommendations, paragraphs 1 through 3).

3. Issues relating to the application of paragraph

14 were subsequently addressed and resolved by a Stipulation at the outset of a scheduled paragraph 40(e) hearing before the Monitor on June 16, 1980 and reported by the Monitor in a document dated June 27, 1980. (See Appendix B). The Stipulation provided that the staffing requirements of paragraph 14 of the Decree were 783.5 positions (743.5 state complement positions and 40 "overcomplement" positions), that the "overcomplement" positions allocated to Cambridge Hospital must be funded by \$500,000 appropriated for those positions and that 40 "overcomplement" positions must be listed by the state accounting system as funded positions. Paragraph 3 of the Stipulation sets forth specific provisions with respect to the process to be used in any reduction of positions and reduction of funds allocated for those positions. In addition, the Stipulation specified notice requirements prior to any reduction in complement due to the implementation of a new food service system or due to the reduction in numbers of households. (Paragraphs 6 and 7).

4. In May, 1980, the Plaintiffs in the present action presented their case before the United States District Court regarding other state hospitals named in the litigation. Prior to the presentation of the Defendants' case, on July 12, 1980, the parties executed a "Memorandum of Understanding" setting forth principles to be incorporated in a Consent Decree. Subsequently, the trial of the action was terminated and a Consent Decree was submitted to the Court for approval on August 15, 1980. The Decree was formally approved by the Court, after notice to the class, on September 15, 1980. The 1980 Consent Decree provides in paragraph 59, in pertinent part, as follows:

"Staffing patterns at Cambridge State Hospital for the period from July 1, 1980, through June 30, 1981, are governed by an agreement of the parties entered before the Cambridge Monitor on June 16, 1980."

B. State Budget Reduction Efforts and the Effect on Funds Allocated to Cambridge State Hospital

5. In July, 1980, Governor Quie stated that the State

of Minnesota was facing a budget deficit of approximately \$90 million by the end of fiscal year 1981. Subsequently, in August, 1980, the Department of Finance issued a revised forecast which estimated a deficit by the end of the fiscal year of \$195 million. The revised forecast led to a directive from the Department of Finance to the Department of Public Welfare that the latter Department must reduce its spending in an amount of \$3,314,100. In determining where spending cuts would be made, Department of Public Welfare officials determined to follow general priorities established by the Governor by not reducing public assistance programs and by honoring statutory and other legal commitments (t. 48).

6. Within the Department of Public Welfare it was determined that the state institutions, including the state nursing homes, must effect budget reductions in the amount of \$818,000. The Chief Executive Officers of the several state institutions were informed of this decision in a memorandum dated August 28, 1980. (Exhibit 15). The \$818,000 cut was to be effectuated by reducing the nursing homes budget by \$137,000 and by reducing the other hospitals by the remaining \$681,000 in proportionate shares.

7. The mandated budget reduction for Cambridge State Hospital amounted to \$86,340. (Exhibit 16). Given these circumstances, the Chief Executive Officer of Cambridge State Hospital made reductions of \$48,613 in the institution's MR salary account, \$22,727 in the GS salary account, \$10,000 in the "all other" account and \$5,000 in the special equipment account. (Exhibit 16). These reductions were made in the state accounting system and are reflected as a reduction in the total fiscal year allocation for the specified salary accounts. (Exhibit 23, column 4; Exhibit 25).

8. In a memorandum from Mr. Dennis Boland, DPW Director of Residential Services, dated October 6, 1980, the justification for reducing the salary accounts at Cambridge Hospital was stated as follows: (Exhibit 16)

"Cambridge budgeted approximately \$85,000 for the possible use of intermittent staff. They feel that by recruiting aggressively to fill their authorized complement, the use of intermittent staff will be reduced in an amount to cover the \$48,613 reduction in the MI (SIC) AID.

The reduction of \$22,727 from the general support AID will be offset by a reduction of staff realized through the installation of a new food system." (See also Exhibit 17).

9. In the memorandum from Barbara Stromer, Assistant Commissioner, Support Services Bureau, Department of Public Welfare, to the Department of Finance dated September 15, 1980, (Exhibit 7, p. 3), the specific plan for effectuating salary reductions in the institutions was stated as follows:

Institutions	\$652,100
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This reduction is attributed to the savings that occur with natural staff turnover (that is the funds not spent between the time a person quits and when a new person begins). Positions that directly care for patients will not be subject to any unusual delays. (See t. 77-78).

C. The Appropriation Process for State Institutions

10. In fiscal year 1981 the Department of Public Welfare received appropriations for the state hospitals as follows:

\$ 90,496,900	Minn. Laws, 1979, Ch. 336, Section 2, Subd. 5; basic salary appropriation (Ex. 26)
10,217,000	Minn. Laws, 1979, Ch. 332, Section 115, Subd. 3; "open appropriation" (Ex. 26)
4,200,000	Minn. Laws, 1980, Ch. 614, Section 29(e) "250 new positions", (Ex. 26)
4,144,500	Minn. Laws, 1980, Ch. 614, Section 158; "cost of living adjustments" (COLA) (Ex. 21 - Cambridge share)
95,000	Minn. Laws, 1980, Ch. 614, Section 189, Subd. 1; "\$225 inflation adjustment" (Ex. 22 - Cambridge share)
<u>560,000</u>	State insurance refund (Ex. 22 - Cambridge share)
\$109,713,000	TOTAL STATE HOSPITAL APPROPRIATION

The Department of Public Welfare is authorized to hire 5,727 staff as follows:

5,427	Minn. Laws, 1979, Ch. 336, Section 2, Subd. 5
250	Minn. Laws, 1980, Ch. 614, Section 29(e)
<u>50</u>	Minn. Laws, 1980, Ch. 614, Section 29(e) ("overcomplement")
5,727	TOTAL STATE HOSPITAL EMPLOYEES

11. In establishing the basic salary appropriation the legislature does not appropriate on a line-by-line basis amount for each position. Rather, the total amount is appropriated for a designated number of positions and within these total amounts there is the expectation that numerous employee expenses and benefits in addition to normal salary such as overtime, shift differential, career ladder, health testing, achievement awards and unfunded COLA will be covered. (Exhibit 10, 26). In addition, this appropriation is expected to fund non-complement (e.g. student workers, service workers) and unfunded, overcomplement positions as well as miscellaneous services (e.g. consultants, the patient pay program). The basic appropriation is premised on the fact that salary savings will occur through turnover and attrition to allow other expenditures to be paid. (Exhibit 9, Attachment B).

12. The Department of Public Welfare's flexibility to transfer within budgeted allocations and to obtain additional appropriations is governed by Minnesota Statutes. Specifically, Minn. Laws, 1979, Chapter 336, Section 2, Subd. 5 provides as follows:

"Positions and administrative money may be transferred between the various activities within each subdivision in this section, except for the institutions."

Minn. Stat. 10.30 (1978) provides that the Department of Public Welfare may transfer the funds from other DPW appropriations to pay for workers' compensation claims. (Exhibit 8, p. 3). Such transfers are only permissible for workers' compensation claims. In addition, Minn. Laws, 1979, Chapter 336, Section 9 provides for a contingent fund for state institutions from which appropriations can be made "for emergency

purposes ... (by) direction of the Governor after consultation with the legislative advisory commission." Finally, the Governor, with consultation from the IAC, can make an appropriation from a general contingency fund. Minn. Stat. 3.30, Subd. 1 (1978), Minn. Laws, 1979, Chapter 333, Section 8, Subd. 2. (See Exhibits 5 and 8).

D. Allocation of Funds for Salaries to the State Institutions

13. In a memorandum dated July 2, 1980, (Exhibit 9), Mr. Boland provided each state hospital with a salary budget for the fiscal year 1981. This budget, among other things, provides a breakdown for the salary accounts at each institution for general services, for the mental retardation, mentally ill, and chemical dependency programs and for the laundry, if any. (See also Exhibit 19).

14. The Cambridge State Hospital initial allocation for the beginning of the 1981 fiscal year was as follows: (Exhibit 9)

MR Salary Account	\$ 8,778,947
GS Salary Account	3,881,413
Laundry Salary Account	<u>315,805</u>
TOTAL	\$12,976,165

15. The total allocation for the salary accounts at Cambridge has been modified since July 2, 1980, to reflect the addition of cost of living adjustments due for July, 1980, a reduction to cover consultant costs, the budget deficit reductions imposed, a reduction for the portion of the attorneys fees imposed on the Cambridge MR salary account, and additions relating to state insurance refunds and the "\$225 inflation adjustment". (Kinde and Offerman testimony, Exhibits 21 through 25). The allocation to Cambridge does not include \$500,000 for over-complement positions as required by the June, 1980 Stipulation. (Exhibit 12).

F. Fiscal Year 1981 Total Appropriations Compared With Estimated Expenditures

16. Exhibit 26 prepared in October, 1980, by the Department's Institution Fiscal Management Section shows that the following amounts have been appropriated for fiscal year 1981 for state hospital salaries:

1979 Appropriation	\$ 90,494,900
Salary Supplement	10,217,100
1980 Appropriation	4,200,000
July, 1980 COLA Supplement	<u>4,144,560</u>
TOTAL	\$109,058,560

This available revenue has since been increased by receipt of insurance refunds and an allocation for the "\$225 inflation adjustment" (\$560,000 and \$95,000). (Exhibit 22).

17. As of October, 1980, the Institution's Fiscal Management Section projected a need for \$3,789,810 in salary savings to keep actual expenditures within available funds. That projection is based on expenditures of \$3,613,480 of the \$4,200,000 appropriated for 250 new positions by the 1980 legislature - a built-in salary savings of \$400,000. In addition, the Department's projections included estimated expenditures of \$159,500 for the "cost of the MR court case to date" and allowance for \$515,082 for "Governor's allotment reduction plan - actual". (Exhibit 26).

18. The amount of salary savings that may be achieved will vary dependent upon a variety of considerations. Specifically, the Department's central office estimates holiday overtime costs for the remaining seven (7) holidays in fiscal year 1981 to be \$85,575 for Cambridge State Hospital. (Exhibit 27). In contrast, Cambridge State Hospital projects holiday overtime costs to be \$119,000 for the seven (7) holidays. (Exhibit 23). System-wide expenses for shift differential costs for fiscal year 1980 were \$956,053. (Exhibit 10). The estimate for fiscal year 1981 as set forth in Exhibit 26 is \$941,417, a lesser amount although the complement has been increased by

250 positions.

19. The projected year end surplus for Cambridge State Hospital for fiscal year 1981 is \$233,816. (Exhibit 23). This surplus is projected by multiplying the most recent pay period cost times the remaining number of pay periods (which yield the sum in column 10 on Exhibit 23), by adding to that sum the salary expenditures to date (column 9), and by subtracting other anticipated expenditures (column 12). The actual pay period expenditures reflect the hours worked (60,430) in that pay period (column 2), which are approximately 2,500 fewer hours than would be worked (62,913) if the full complement were employed (column 1).

20. Absent the availability of additional funding sources, the record supports the finding that in order for the Cambridge State Hospital to operate within present available salary allocations, it is likely that fewer than the total complement of personnel will likely have to be employed. This finding, while not conclusive, is made with due consideration of the Department's projected year end surplus of \$233,816 as set forth on Exhibit 23, and in recognition of Cambridge State Hospital's Chief Executive Officer, Dale Offerman's, testimony that based on his experience at the Hospital he does not give full credence to the projections in Exhibit 23 because he does not yet know what expenditures, including the increased COLA expenditures provided by the State's collective bargaining agreements, will be required in the second half of the fiscal year. (t. 224-229).

G. Attorney Fees

21. The Cambridge State Hospital's MR salary account has been reduced \$19,375 as its share of the attorney fees paid pursuant to paragraph 108 of the 1980 Consent Decree. (Exhibits 23, 25). Paragraph 108 provides that the Department of Public Welfare will pay \$100,000 in costs and attorney fees within 15 days of the date of the Decree.

22. Prior to the adoption of the 1980 Consent Decree it has been the practice of the Department of Public Welfare to pay attorney fees awarded against the Department from the budget of the activity which has been the subject of the litigation. Specifically, there is no existing separate fund established for litigation expenses.

23. Paragraph 108 of the 1980 Consent Decree does not specify the funding source out of which payment for attorneys' fees is to be made. Rather, the 1980 Consent Decree merely directs the Defendants to "cause payment to be made" in the amount of \$100,000 to cover costs and attorneys' fees.

24. In July, 1978, Judge Larson reduced the award to Plaintiffs for attorneys' fees arising out of the successful negotiations of the 1977 Consent Decree for Cambridge State Hospital, citing the fact that monies would be paid, "from the same budget that must be used to effectuate the reforms the Plaintiffs have won." Welch v. Dirkswager, Memorandum Order of July 14, 1978, p. 7. In addressing the source for such payment the Court further stated the following:

"Because the award here be taken from the general funds of the Welfare Department, the Court must insure that the amount does not interfere with the Department's ability to carry out its duties, now or in the future (A)ll of the factors discussed must be balanced and considering them all, particularly that the payments will come from the same funds necessary to insure humane living conditions at Cambridge, the Court has (set the appropriate attorneys' fees.)" Id.

H. Payment of Al Beck's Salary Out of Cambridge State Hospital Salary Accounts

25. Al Beck is an employee of the Department of Public Welfare who works at the Central Office in St. Paul and not at Cambridge State Hospital. Mr. Beck's salary has been paid out of the Cambridge State Hospital salary account as indicated by the salary roster prepared by Mr. Kinde. (Exhibit 19, t. 75, 218).

26. Since the early 1970's it has been the practice of the Department of Public Welfare to pay Mr. Beck's salary as an overlap position at Cambridge State Hospital. (t. 218). Specifically, the positions of Mr. Beck and Mr. Offerman share

the same line item in the Cambridge State Hospital budget.

27. Mr. Beck's total salary and fringe benefits as of May 21, 1980 amounted to \$33,124. (Exhibit 19, p. 108, 125).

I. Technical Assistance Positions

28. Pursuant to paragraph 28 through 33 of the 1980 Consent Decree the Defendants are required to allocate three staff positions to provide technical assistance in the development of community-based services for mentally retarded persons. The Decree directs the Defendants to fill one of the positions no later than November, 1980, and the other two positions no later than January 1, 1981.

29. The Defendants have indicated the intention to fund the three technical assistance positions (TAP) as overlap positions. There is, however, no evidence to indicate that the Department has in fact utilized the Cambridge State Hospital salary accounts to date to pay for the salaries of the three TAP positions.

J. Payment for the Monitor Position

30. The 1977 Consent Decree provides in paragraph 47 that the Monitor be paid by the Defendants, as part of the costs of the action, "out of funds other than those provided for Cambridge State Hospital."

31. Pursuant to paragraph 97 of the 1980 Consent Decree the Department of Public Welfare must provide \$55,000 in funding for the first year of service for the monitor in that Decree, but there is no language comparable to that in the 1977 Decree restricting payment for the monitor position from "funds other than those provided for Cambridge State Hospital."

32. All payments to the 1977 Consent Decree monitor for services performed subsequently have been paid by the Defendants out of the system-wide hospitals' salary accounts. (Exhibit 8, p. 3).

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

The Plaintiffs assert that the action of the Chief Executive Officer at Cambridge State Hospital in reducing the MR salary account by \$48,613, the GS salary account by \$22,727, the "all other" account by \$10,000 and the special equipment account by \$5,000 is tantamount to a reduction in the full-time equivalent positions allocated to the Hospital. Therefore, the Plaintiffs assert that such action constitutes a violation of the 1977 Cambridge Consent Decree and the June, 1980 Stipulation.

Paragraph 14 of the 1977 Cambridge Decree provides as follows:

"Effective May 1, 1978, the total complement assigned to Cambridge State Hospital must be 822.9 full-time equivalent positions consisting of the 621 state complement positions assigned as of the date of this Consent Decree, 60.9 state funded full-time equivalent positions assigned pursuant to paragraph 13, above, to meet the requirements of this Consent Decree, and such additional regular complement positions assigned pursuant to paragraph 13, above, or additional positions assigned pursuant to the Comprehensive Employment and Training Act as are necessary to meet that total; provided that up to 11 positions in addition to that total will be assigned to fulfill the requirements of paragraph 2(i)(iv). Thereafter the total number of positions may be reduced if reduction in the resident population at Cambridge State Hospital should require a lesser number of positions in order to meet the staffing requirements of this Consent Decree. If the direct care staff-resident ratios required by paragraph 4 are met with a lesser number of staff persons either prior to or after May 1, 1978, the total number of positions required by this paragraph may be reduced accordingly."

As the resident population at Cambridge State Hospital subsequently decreased, the parties agreed that the total number of required full-time equivalent positions would be subsequently reduced. Specifically, at the June 14, 1979 paragraph 40(e) hearing before the Monitor the parties agreed to reduce the number of full-time equivalent positions to 814.6. (Appendix A, Findings of Fact, paragraph 2). On June 16, 1980 the parties agreed that the required number of full-time equivalent positions would be further reduced to the current 783.5. (Appendix B, paragraph 1).

Although the term "full-time equivalent positions" is not defined in the Cambridge Consent Decree, the parties agreed

in an evidentiary hearing before the undersigned on June 14, 1979 that "full-time equivalent positions" means "a position which is comparable in scope to a state complement position and for which funding is guaranteed." (Appendix A, Findings of Fact, paragraph 6). On the basis of this definition, the Plaintiffs assert that allocation of funding is such an essential element to the meaning of "full-time equivalent positions" that any reduction in funding is tantamount to a reduction in the number of positions allocated. Therefore, Plaintiffs contend that the number of allocated full-time equivalent positions were necessarily unilaterally reduced when the Chief Executive Officer of Cambridge State Hospital made a budget cut totalling \$86,340 in the Hospital's salary accounts.

In support of this construction of the Consent Decree, Plaintiffs have relied upon the United States Supreme Court decisions in United States v. Armour & Company, 402 U.S. 673 91 S.Ct. 1752 (1971) and United States v. ITT Continental Baking Co., 420 U.S. 223, 95 S. Ct. 926 (1975). Although the issues in these cases are distinguishable from those in the present matter, both cases involve the proper construction of a consent decree between the parties. In Armour the Court concluded that "the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it." In ITT the Court reiterated this rule of construction, and further stated the following:

"Since a consent decree order is to be construed for enforcement purposes basically as a contract, reliance upon certain aids to construction is proper, as with any other contract. Such aids include the circumstances surrounding the formulation of the consent order, any technical meaning words used may have had to the parties, and any other documents expressly incorporated in the decree."

In applying these principles the Plaintiffs have construed paragraph 14 of the Cambridge Decree, the definition of "full-time equivalent positions" as agreed upon in the 1979 paragraph 40(e) hearing and the June, 1980 Stipulation as providing that both allocation of positions and allocation of

funding are essential if there are to be the required number of full-time equivalent positions at Cambridge State Hospital.

The Plaintiffs submit that the budget deficit experienced by the State of Minnesota which resulted in a directive to the Department of Public Welfare to reduce its spending and in turn to Cambridge State Hospital to cut its budget by \$86,340 has resulted in a violation of paragraph 59 of the 1977 Cambridge Consent Decree. Specifically, Plaintiffs contend that while the State of Minnesota may face a budget deficit and the Governor and the Department of Finance may have to act to avoid such a deficit, the Defendants in this case have an obligation created by the Decree to provide 783.5 full-time equivalent positions for Cambridge State Hospital and that the Defendants are prohibited from instituting unilateral mandated budget reductions in the salary accounts necessary to fund these positions. Since the agreed upon meaning of full-time equivalent positions requires that the positions be both allocated and funded, a reduction in the salary accounts is necessarily a reduction in the number of positions allocated and in violation of the Decree.

The Plaintiffs contend that it is wholly improper for Cambridge State Hospital to pay the salary for Al Beck out of Hospital funds. The Plaintiffs submit that they were not previously aware of this practice notwithstanding its duration and that such payment for all practical purposes results in the complement of positions allocated to Cambridge being reduced from 783.5 to 782.5.

The Plaintiffs submit that the amounts allocated against the Cambridge MR salary roster for attorneys' fees paid in 1980, the potential allocation of costs of the TAP positions and the potential allocation of costs for the monitor of the 1980 Consent Decree are improper and contrary to the 1980 Consent Decree. Specifically, "full-time equivalent positions" is defined in paragraph 5 as follows: "those state complement positions which are authorized and funded by the legislature." The emphasis

on funding of the positions is reiterated in paragraph 6 which allows consideration of over complement positions only "to the extent that full funding for an over complement position is actually allocated to the hospital filling the position." Given that these full-time equivalent positions must be authorized and funded it follows that any reduction in funding is a reduction in the number of positions provided by the 1980 Consent Decree.

As noted previously, paragraph 108 of the 1980 Consent Decree addresses attorneys' fees, paragraph 97 provides for the allocation for the first year of service of a monitor, and paragraph 28 addresses the subject of the TAP positions. Given these explicit and independent obligations, Plaintiffs submit there should be no reason to look outside the "four corners" of the document for any other justification for the Department's contention that monies for attorney fees, the TAP positions, and the monitor can be obtained by reducing protected positions in the institutions.

The Defendants assert that the Plaintiffs have not set forth a proven violation of the Cambridge Decree and that the grievance is in essence involving a disagreement as to how the Department of Public Welfare is to spend discretionary funds from the state hospital salary account. The Cambridge Decree speaks only of an absolute number of "full-time equivalent positions. (Paragraph 14). The June, 1980 Stipulation requires that Cambridge's 40 over complement positions be accompanied by the allocation of the entire \$500,000 appropriated by the legislature. Minn. Laws, 1979, Ch. 336, Section 2, Subd. 5. There is no allegation that this has not been done. (Exhibit 12). Except for this provision concerning over complement positions, there is no requirement that positions be funded by a specific dollar amount.

While recognizing that the Cambridge Decree requires that Defendants not comply with any executive or administrative order which interferes with or impedes compliance (paragraph 50) the Defendants note that it is uncontested that the

Governor and the Finance Department requested that the salary account reductions not be made at the expense of direct client services. Accordingly, the Department of Public Welfare thoroughly reviewed its budget for administrative expenses and anticipated cancellations (returns to the treasury) which would not affect clients. (Exhibit 7). The Department concluded that the reduction of \$652,100 from the institution's salary accounts (including state nursing homes) would be balanced off from salary savings and therefore not in violation of the Governor's directive. Thus, the Defendants submit that a reduction in funding of the salary accounts for Cambridge State Hospital does not constitute a per se violation of the Decree and that the Plaintiffs have not demonstrated any diminution of care and treatment of Cambridge residents.

Defendants submit that the salary reduction effectuated by the Department of Welfare for Cambridge State Hospital have not interfered with the maintenance of the full complement of 783.5 positions. Fluctuations in the use of overtime, health testing, service workers and achievement awards do not mean that individual line items are either over funded or under funded. There simply is no direct correlation. At present Cambridge's expenditures for all four non-salary costs have been reduced or eliminated as part of the budgetary balancing process. It is therefore meaningless and misleading to argue that a small reduction in Cambridge's budget results in staff becoming less than "fully funded". The legislative budgetary process is simply unrelated to the notion of a fully funded line item.

The Defendants rely on the uncontroverted testimony of Cambridge's Chief Executive Officer that the vacancy rate at Cambridge has never been lower than at the date of the present hearing. (t. 234). Staff ratios are not only being met but the dollars allocated are sufficient to meet staffing needs.

With respect to the issue of litigation expenses, the Defendants emphasize that both the 1977 and 1980 Consent Decrees are silent as to the source for such expenditures. Specifically, it has been a long established practice at the Department of

Public Welfare for litigation expenses to be paid by the activity fund responsible for the action. On the basis of this established practice and on the basis of Judge Larson's July, 1978 decision regarding the reduction of attorney fees previously noted, Plaintiffs have been on notice that the Department of Public Welfare pay attorney fees and litigation costs from the Hospital salary account.

The Defendants also emphasize that the legal history of the case is instructive in regards to the payment of monitor expenses. While the 1977 Cambridge Decree provided that monitor's expenses "shall be paid ... out of funds provided by the Defendant, which are hereby assessed as part of the costs of this action to be paid out of the funds other than those provided for Cambridge State Hospital ..." (paragraph 47), the 1980 Decree is absolutely devoid of any parallel language. (Paragraph 97). This, the Defendants submit, reflects the practical realities of a system-wide settlement whereby the Department of Public Welfare has no other source for the monitor's budget than the collective hospital salary accounts.

The TAP staff and Al Beck are being paid as overlap positions from salary savings. The Defendants submit while the Plaintiffs stipulated in 1979 that overlap positions which had guaranteed funding could be counted toward the positions required by paragraph 14, they now contend that the funding of TAP positions as overlap is improper. With respect to Mr. Beck's salary as an overlap position, the Defendants submit that paying Mr. Beck in this fashion has been the long standing practice of the Department. Defendants submit that the gist of the Plaintiffs' hidden agenda in the present proceedings relates to their disagreement as to the legislature's method of appropriating lump sums to the Department of Public Welfare and that they would like to see the state hospital system better funded. In this regard, the Defendants have reminded the Monitor of Judge Bartel's recent error in the Willowbrook case where Judge Bartel found the Governor of New York in contempt for failing to obtain funds

elsewhere after the state legislature had deleted a requested funding allocation by the Governor. In reversing, the 2d Circuit Court in New York State Association for Retarded Children, Inc. v. Carey, 492 F. Supp. 1110 (EDNY, 1980), concluded that the Governor had done everything within his lawful authority to obtain funding for the review panel. Specifically, the Court of Appeals clearly implied that the District Court Judge had involved himself too extensively in the operation of the hospital system.

Conclusions

On the basis of the foregoing findings of fact, and careful analysis of the evidence and testimony presented in the hearing the Monitor makes the following conclusions:

1. Applying the applicable standards for construction of provisions of a consent decree, the term "full-term equivalent position" in paragraph 14 of the 1977 Consent Decree for Cambridge State Hospital means:

"... a position such as a state complement position or a position comparable in scope to a state complement position for which funding is guaranteed."

2. While the present action by the Defendants in unilaterally reducing the funding allocation for the Cambridge salary accounts does not constitute a per se violation of the Decree and June Stipulation, it does give rise to a serious question as to whether Cambridge Hospital possesses the necessary financial capacity to adequately fund the 783.5 full-time equivalent positions. Thus, there clearly is a correlation between allocated funding and allocated positions. If there is a reduction in one component, there will likely be a reduction in the other. While admittedly, "salary savings" may provide a means whereby the Hospital may offset a certain portion in the reduction, the reliance on such "salary savings" projection within the context of other added expenditures such as employee overtime and cost of living adjustments, is speculative. In addition, while there has been no showing in the record to suggest

Hospital delays in filling of vacancies, the reliance on salary savings to balance expenditures gives rise to the clear possibility or temptation that future vacant positions will not be refilled expeditiously. Thus, under the present circumstances the scope of funding reduction is improper and violative of the Consent Decree. This conclusion does not constitute an intrusion into the province of legislative authority to determine its method of appropriation nor does it constitute a means to substitute judgment for that of the Department of Public Welfare regarding its budgetary process. Rather this conclusion is based on the reality that the funding reductions imposed are likely to impact adversely on the mandated 783.5 full-time equivalent positions at Cambridge State Hospital.

3. The Consent Decree is a binding agreement which must be construed as a contract setting forth mutual promises and obligations. A fundamental obligation under the Decree is for the Defendants to insure that there is adequate funding for the mandated 783.5 positions. It does not follow that the Plaintiff must show as a condition precedent to insure the Defendants' compliance with this obligation that a diminution of care to Hospital residents has occurred. To require such a condition would nullify and ignore the very existence of the stated staffing allocations as set forth in paragraph 14. If the Defendants were to be allowed at their own discretion to determine that it is no longer necessary to guarantee adequate funding for the designated positions, it would be akin to saying that the Defendants' undertaking to meet the terms of the Consent Decree involves no real commitment at all and that the Consent Decree is merely an empty box. Such is not the case.

Thus, the Defendants' actions in reducing the Cambridge State Hospital MR salary account by \$48,613 and the GS salary account by \$27,727 to achieve budget reductions as directed by the Governor and the Department of Finance indicates that the Defendants have violated paragraph 14 of the Cambridge Consent Decree as modified by the June Stipulation. The salary

savings projections submitted by the Defendant are at this juncture speculative when viewed in the context of other upcoming added expenditures necessary at Cambridge State Hospital and do not establish a suitable guarantee of sufficient funding availability to meet fiscal year 1981 expenditures. Such a reduction in funding should be remedied by the guarantee by the Defendants that other funding allocations are available to meet the Cambridge obligations.

4. The reduction in the Cambridge State Hospital MR salary account in the amount of \$19,375 to meet the costs of attorney fees paid pursuant to paragraph 108 of the 1980 Consent Decree does not establish a violation of paragraph 14 of the Cambridge Consent Decree as modified by the June Stipulation as long as the Defendants can provide sufficient guarantees of available funding for the positions allocated to the state hospital.

5. The payment of the salary of an employee of the Central Office of the Department of Public Welfare (Al Beck) out of Cambridge State Hospital salary accounts does not in itself constitute a violation of paragraph 14 of the Cambridge Consent Decree as modified by the June Stipulation. However, pursuant to the Decree and Stipulation sufficient funding must be guaranteed to provide for a staffing allocation of 783.5 positions within the Hospital.

6. The reduction in the salary accounts of Cambridge State Hospital to pay for costs of technical assistance positions as required by paragraphs 29 through 33 of the 1980 Consent Decree and the costs of the monitor appointed pursuant to Part VIII of said Decree do not in themselves constitute a violation of the Cambridge Consent Decree or the June Stipulation. Rather, sufficient guarantees must be provided by the Defendants to establish that sufficient funding is available to meet the obligations for the full-time equivalent positions set forth in paragraph 14 of the Consent Decree.

Recommendations

1. In order to insure compliance with paragraph 14 of the Cambridge Consent Decree as modified by the June Stipulation, the Defendants should institute a means to effectively guarantee that the reduction in the MR and GS salary account allocations for Cambridge State Hospital in the amounts of \$48,613, \$27,727 and \$19,375 referenced above will not decrease the available funding for the positions noted in paragraph 14.
2. If the Department of Public Welfare is to continue to pay Mr. Al Beck out of the Cambridge State Hospital salary account, it must provide a sufficient guarantee through additional funding that the allocation of positions set forth in paragraph 14 is adequately funded.
3. If the Department of Public Welfare reduces salary accounts at Cambridge State Hospital in order to pay for the costs of the technical assistance positions, it must provide a sufficient guarantee through additional funding that the allocation of full-time equivalent positions as set forth in paragraph 14 is adequately funded.
4. The Defendants should take immediate action to insure guaranteed funding of the 783.5 full-time equivalent positions for fiscal year 1981. Specifically, within 10 days from the receipt of these Findings and Recommendations the Defendants and Plaintiffs should meet in an attempt to agree upon a stated additional dollar amount needed to guarantee the funding of the 783.5 full-time equivalent positions for the remainder of fiscal year 1981 recognizing that a certain amount of "salary savings" offset will occur due to natural attrition factors and refilling positions and recognizing that additional expenditures may be necessary beyond the previously stated Department projections as set forth in the record of this matter. While "salary savings" will admittedly offset part of the salary reduction and expenditures for the 1980 Monitor, TAP and attorney fees, the amount credited for such salary savings should logically relate in percentage terms to the actual expenses in 1979 and 1980 and should be adjusted to account for additional expen-

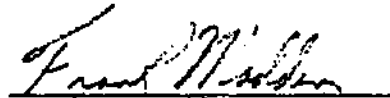
ditures.

Within a reasonable time thereafter, not later than March 1, 1981, the Defendants should take and complete necessary measures to insure the reestablishment of such funding and provide written evidence of these measures to the Plaintiffs and Monitor.

5. Within this interim period the undersigned retains jurisdiction over this matter to the degree necessary and consistent with his authority to insure effective measures are taken to insure compliance with paragraph 14 of the Cambridge Consent Decree and with the Conclusions and Recommendations herein.

Respectfully submitted,

Dated this 30th day of
January, 1981



Frank J. Madden
Monitor
Suite 200 Talmadge Building
1219 Marquette Avenue South
Minneapolis, Minnesota 55403
(612) 333-3160

APPENDIX A

Patricia Welsch, by her
father and natural guardian,
Richard Welsch, et al., on
behalf of herself and all
other persons similarly
situated,

Plaintiffs,

-vs-

Arthur Noot, et al.,

Defendants.

Paragraph 40(e)
FINDINGS OF FACT AND
RECOMMENDATIONS
4-72 Civil 451

On June 14, 1979, at 8:30 a.m., in the Minnesota State Capitol, an evidentiary hearing was held before Frank J. Madden, Court Appointed Monitor pursuant to Paragraph 40(e) of the Consent Decree in the above matter.

P. Kenneth Kohnstamm, Special Assistant Attorney General, Fourth Floor Centennial Office Building, St. Paul, Minnesota, appeared as counsel for the defendant, Department of Public Welfare. Michael Fargione, 222 Grain Exchange Building, 323 Fourth Avenue South, Minneapolis, Minnesota, appeared as counsel on behalf of the plaintiffs. The record remained open through August 1, 1979, for the submission of post-hearing memoranda.

The hearing was requested by the defendant Department of Public Welfare as a result of plaintiffs' prior District Court motion to amend the Consent Decree regarding Cambridge State Hospital. Plaintiffs had sought an Order to delete Paragraph 2(i)(iv) which permits the consideration of CETA employees in determining staff compliance and to amend Paragraph 14 to require that state complement positions be assigned to Cambridge State Hospital in a number sufficient to comply with the staffing provisions of the Decree.

STATEMENT OF ISSUES

1. What is the meaning of the term "full time equivalent positions" as used in Paragraph 14?
2. Should "intermittent" positions at Cambridge State

Hospital be counted in determining compliance with Paragraph 14?

3. Should CETA "public service workers" as described in Exhibit No. 17 (see Attachment A) be counted as direct care staff in compliance with Paragraphs 2 and 14?

PERTINENT PROVISIONS OF THE CONSENT DECREE

Paragraph 2(i)

The term 'direct care staff' as used in this Consent Decree includes only those persons employed at Cambridge State Hospital in Residential Program Services or Structured Program Services as human services technicians, human services technicians senior, human services specialists or human services specialists senior, subject to the following provisions:

Paragraph 2(i)(ii)

Other persons may be considered within the direct care staff for purposes of determining compliance with paragraph 4 and 7 of this Consent Decree if other portions of this Consent Decree specifically so provide.

Paragraph 2(i)(iv)

Persons employed as human services technicians pursuant to the Comprehensive Employment and Training Act may not be considered as part of the direct care staff until completion of a one month training, orientation and on-the-job training program unless the Chief Executive Officer of Cambridge State Hospital certifies in writing that the person so employed is qualified by reason of prior work experience, training, or ability (which must be described) to assume the responsibilities of that position without completion of all or a part of that program.

Paragraph 14

Effective May 1, 1978, the total complement assigned to Cambridge State Hospital must be 822.9 full-time equivalent positions consisting of the 621 state complement positions assigned as of the date of this Consent Decree, 60.9 state funded full-time equivalent positions assigned pursuant to paragraph 13, above, to meet the requirements of this Consent Decree, and such additional regular complement positions assigned pursuant to paragraph 13, above, or additional positions assigned pursuant to the Comprehensive Employment and Training Act as are necessary to meet that total; provided that up to eleven positions in addition to that total will be assigned to fulfill the requirements of paragraph 2(i)(iv). Thereafter the total number of positions may be reduced if reduction in the resident population at Cambridge State Hospital should require a lesser number of positions in order to meet the staffing requirements of this Consent Decree. If the direct care staff-resident ratios required by paragraph 4 are met with a lesser number of staff persons either prior to or after May 1, 1978, the total number of positions required by this paragraph may be reduced accordingly.

Based upon the proceedings herein, the Monitor makes the following:

FINDINGS OF FACT

1. Since the initial adoption of the Consent Decree in December, 1977, the total complement assigned to Cambridge State Hospital which according to Paragraph 14 was to be 822.9 full-time equivalent positions has fluctuated due to residential population decline and the number of residents qualifying for Structured Program Services.

2. On June 14, 1979, the parties agreed that Paragraph 14 required 814.6 full-time equivalent employees. (Transcript 36:9-13, see Attachment B).

3. On June 14, 1979, the defendant acknowledged that it was below the required number of full-time equivalent positions for the months of May and June, 1979. (Transcript 31:10-17, 49:6-8, 116:23-24).

4. On June 14, 1979, the parties agreed that on the basis of defendant's proposal following legislative action taken by the 1979 Minnesota Legislature, Cambridge State Hospital would have the necessary number of full-time equivalent positions required for July, 1979. (Transcript 37:13-21 - Line 18 should read 820 rather than 720).

5. The July, 1979, staffing allocation for Cambridge State Hospital would consist of 704 state complement positions, 29 paper positions and 10 overlap positions carried over from fiscal year 1979, 30 additional over complement positions added by the Department July 1, 1979, for a total of 773 positions. In addition, the Department has allocated two (2) intermittent positions and 79 CETA positions which are the basis of the dispute in the present proceedings.

6. The parties agreed that a full-time equivalent position means:

A position which is comparable in scope to a state complement position and for which funding is guaranteed.

7. The parties agreed that in determining the required number of full-time equivalent employees pursuant to Paragraph 14

that 29 paper positions and 10 overlap positions would be included. (Transcript 35:6-14).

8. An "intermittent" position by definition is a state line item which the Department subdivides, commonly into tenths, which thereby enables the Department to hire 10 individuals on one line item. (Transcript 84:4). Salaries in excess of one full-time position are funded through salary savings, (Transcript 84:10-13), and employees hired in the "intermittent" positions are required to meet the job specifications of regular state complement employees. (Transcript 84:23).

9. In December, 1977, when the Consent Decree was adopted, Cambridge State Hospital had two intermittent line items which it used and continued to use for the purpose of employment of 20 employees which were credited as two full-time equivalent positions. (Transcript 100:8).

10. In June, 1978, Mr. Dale Offerman, Chief Executive Officer for Cambridge State Hospital, reported to the Monitor that the loss of 73 CETA positions would be partially offset by the use of "two state FTE positions . . . converted to 17-20 intermittent positions." (Exhibit 14, Attachment C).

11. Since December, 1978, the number of individuals employed by intermittent line item has been reflected in the charts submitted by the Department in its monthly reports.

12. In December, 1977, when the Consent Decree was adopted, the parties acknowledged the inclusion of CETA employees in Paragraph 14 subject to the limitations pursuant to Paragraph 2(i)(iv). The initial complement of 152 CETA positions was subsequently reduced to 79 in June, 1978.

13. In the past approximately 85% of the CETA positions have been assigned to direct care positions (Residential or Structured Program Services) to assist in filling the approximate 400 direct care positions required at Cambridge State Hospital. (Attachment B, Transcript 122:11-13 and monthly reports "Positions Assigned by Organization").

14. The October, 1978, CETA program modifications, effective April 1, 1979,¹ established revised employment re-

quirements and salary limitations which directly impacted on the Department's capability to hire future CETA incumbents at Cambridge State Hospital. A summary of revised federal CETA requirements for Cambridge State Hospital is as follows:

	<u>Title II D</u>	<u>Title VI</u>
Persons Eligible	-15 weeks unemployed -family income of 70% "lower living standard"	-10 weeks unemployed -family income of 100% "lower living standard"
	-no voluntary quit of job during past 6 months	-no voluntary quit of job during past 6 months
Hourly Wages	-\$3.19 average wage -no supplement -minimum: \$2.90 or "prevailing rates... in similar occupations"	-\$3.19 average wage* -10% supplement -minimum: \$2.90 or "prevailing rates... in similar occupation"
Maximum Term	-78 weeks	-78 weeks

15. As of June, 1979, out of the "old" CETA allocation of 79 positions the incumbent population of CETA employees at Cambridge State Hospital has declined to 52 with attrition factors indicating that the number will continue to substantially decrease.

16. Since the wage limitations in effect under the "new" CETA program (\$3.19 per hour or \$3.51 for Title VI including 10% supplement) are not likely to increase, there are not in existence direct care positions at Cambridge State Hospital that can be filled at this wage level. (Transcript 126: 9-23).

17. Since federal law requires that CETA employees receive wages comparable to those of state employees performing similar functions (Simmon's Deposition 22:12-15, 29 U.S.C.

¹Title VI was recodified from 29 U.S.C. Sec. 961 et seq. (1975) to 29 U.S.C. Sec. 981 et seq. (1979). Title II, 29 U.S.C. Sec. 841 et seq. (1975), became Title II D, 29 U.S.C. Sec 853 et seq. (1979). New federal regulations for the CETA program were issued April 3, 1979. 44 Fed. Reg. 19990-20053.

* The Minnesota Balance of State office is using \$3.19 as a maximum rather than as an average hourly wage for Title VI projects. (Simmons' Deposition 19:13-25). Since this is not required by federal statute, the Department of Economic Security,

826 (b) (3) (1979)), "new" CETA employees at Cambridge State Hospital will not be able to perform all of the functions of current direct care positions. (Transcript 131:8-20, 126:9-23, Consent Decree Paragraph 2(i)).

18. As of June, 1979, the classification of "Public Service Worker" has been approved by Minnesota Department of Personnel in an attempt to qualify for CETA funding under the new law. (Exhibit 17, Attachment A and Transcript 130:10-14, 133:2-11).

19. The classification of "Public Service Worker" has never before been used at Cambridge State Hospital, (Transcript 123:8-11), and efforts to assign to this classification responsibilities which are routinely performed by direct care staff at Cambridge State Hospital has been rejected by the Department of Personnel as being "too broad in scope." (Transcript 128:6 - 129:18).

20. While the salary level for the CETA "Public Service Worker" classification has not been established, the salary level will be less than the current human services technician. The job description for the "Public Service Worker" while including some of the basic responsibilities of the human services technician, (Exhibit 17, Attachment A), excludes participation in the inter disciplinary team, assessing SPS participants, and passing medications. (Transcript 128:23-129:11).

Based upon the foregoing findings of fact, the Monitor makes the following:

CONCLUSIONS AND RECOMMENDATIONS

1. Full-time equivalent positions: A full-time equivalent position means

A position which is comparable in scope to a state complement position and for which funding is guaranteed.

2. Intermittent line items: While Paragraph 14 does not expressly authorize the use of intermittent line items in the calculation of total state complement, the past practice of the parties substantiates the conclusion that intermittent

line items have been included on a limited basis as an implied inclusion in the calculation of Paragraph 14. Such a practice has been clearly enunciated in the monthly reports since December, 1978, as a consistent and reoccurring means to fulfill the obligations of the complement requirements for staffing. Therefore, rather than abolishing this practice, the usage of intermittent line items can be continued when necessary so long as the positions meet the definition of a "state complement position" stated above in that the Department guarantees sufficient funding and as long as the Department does not increase without justification of a substantial change in circumstances the present four FTE line items.

3. CETA Public Service positions: Paragraph 14, as originally adopted by the parties clearly contemplates the inclusion of CETA positions in the total state complement. However, the circumstances warranting such an inclusion have substantially changed with the enactment of statutory changes in the CETA program effective April 1, 1979. The "Public Service Worker" or a similar position was not contemplated by the parties to the Consent Decree and does not meet the requirements of a direct care position as set forth in Paragraph 2(i). While the inclusion of the position of "Public Service Worker" does not meet the requirements of direct care, the position or a similar CETA position may still qualify for inclusion in the total complement depending upon the Department's demonstrated ability to show flexibility in the current CETA requirements. Since it is seriously doubtful that such flexibility currently exists in the CETA program, the better solution would be for the Department to allocate the necessary number of positions from the recently funded legislative over complement provided to the Department. (See Department Exhibit A, Attachment D.)

Dated this 9th day of
October, 1979

Frank J. Madden
Monitor

APPENDIX B

Welsch, et al.,

Plaintiffs,

vs.

Noot, et al.,

Defendants.

Stipulation Regarding
Cambridge State Hospital
Consent Decree
4-72 Civil 451

On June 16, 1980, at 1:00 p.m., in the State Office Building, a hearing was conducted before the undersigned Court Appointed Monitor pursuant to Paragraph 40(e) of the Consent Decree in the above matter. The hearing was requested by the Plaintiffs concerning issues relating to staffing and funding allocations for Cambridge State Hospital.

P. Kenneth Kohnstamm, Special Assistant Attorney General, Fourth Floor Centennial Office Building, St. Paul, Minnesota, appeared as counsel on behalf of the Defendants. Michael Fargione, 222 Grain Exchange Building, 323 Fourth Avenue South, Minneapolis, Minnesota, appeared as counsel on behalf of the Plaintiffs.

At the outset of the hearing the parties stipulated on the record to the following:

1. As of July 1, 1980, the staff requirement for Cambridge will be 783.5. (See Appendix A). This requirement will be met by providing a state complement of 743.5 and 40 "overcomplement" positions.
2. The "overcomplement" positions referred to must be positions which are funded by having \$500,000 allocated to Cambridge State Hospital effective July 1, 1980. The allocation must occur in a way which causes the state accounting system to list these 40 positions as being funded positions.
3. Any reduction in complement which may occur during the period from July 1, 1980 through June 30, 1981, must come from the overcomplement positions. Reduction in funding due to loss of the overcomplement positions must be at a rate which corresponds to the future savings to be realized after the complement position is removed. For example, money is being allocated at a rate of \$12,500 per position (40 positions funded with \$500,000). If twenty positions were removed from the complement effective November 1, the agency would be permitted to withdraw 2/3 of the salary account (\$8,333) for each of the 20 positions.

4. It is anticipated that Cambridge may experience some reduction in the need for food service workers due to a reorganization of the food service system. No reduction in complement will occur based upon the new food service system until it has been in operation for eight weeks so that the reduction in complement can be based upon actual experience with the system rather than upon anticipated savings.
5. The staffing requirement of 783.5 positions is based upon the existence of 36 households. This number of households will exist following the closing of one household in the infirmary, scheduled for July, 1980. Before any further consolidation of households may be considered, there must be a reduction in the total population at Cambridge. The agency may consider closing another household if the population drops to 516. No more than one household may be eliminated prior to July 1, 1981, unless the population drops below 500.
6. Before any complement positions may be withdrawn due to reduction in food service workers, plaintiff's attorney must receive at least four weeks prior notice together with an explanation from the Chief Executive Officer indicating the basis for the proposed reduction.
7. Before any consolidation of households may occur, plaintiff's attorney must receive notice as soon as consolidation is being considered, and this notice must be at least eight weeks prior to any consolidation occurring. Any consolidation which reduces the number of households below 36 must be made on the basis of programmatic considerations. The professional judgment of the Chief Executive Officer of Cambridge State Hospital will be given great weight in determining whether or not programmatic justifications exist for any proposed consolidation of households.
8. The term of the monitor will be extended until August 1, 1981, so that questions concerning the consent decree and the present agreement may be reviewed by the monitor.

In addition, the parties stipulated to the inclusion of Appendices B and C as accurately reflecting the 1979 staffing patterns for Cambridge State Hospital.

Respectfully submitted,


Frank J. Madden
Monitor

Dated this 27th day of
June, 1980

APPENDIX A

Johnson	53.25
Palmer	62.5
Personnel	8
Zimmerman	4
Ogdahl	7
Doebler	
Med. Lab.	2.6
Infirmery West	14
Offerman	14
Clerical	2
Social Work	13
Dental	4
Physicians	3
Registered Nurse	12
Therapists/ Assts.	13
SPS	
Direct Care	68
Supervisors etc.	52.5
Support	3.5
RPS	
Direct Care	320.4
Supervisors	65.5
Support	<u>61.25</u>
	783.5

APPENDIX B

RESIDENTIAL SERVICES: DIRECT CARE STAFFING AT CAMBRIDGE

Standard from June, 1979 hearing: 346.4 direct care

	9/79	10/79	11/79	12/79	1/80	2/80	3/80	4/80	5/80
Complement	272.6	268.6	269.6	270.6	270.6	270.6	270.6	270.6	270.6
Over complement	40.3	40.3	40.3	40.3	40.3	40.3	40.3	40.3	40.3
CETA (on hand)	20	9	8	8	8	7	4	3	3
Intermittents	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>
Total	334.4	319.4	319.4	320.4	320.4	319.4	316.4	315.4	315.4
(WEP									
-assigned	0	10	10	10	10	17	17	14	14
-on hand)	0	0	9	10	9	9	9	9	7

APPENDIX C

TOTAL COMPLEMENT AT CAMBRIDGE STATE HOSPITAL

Standard from June, 1979 hearing: 814.6

	9/79	10/79	11/79	12/79	1/80	2/80	3/80	4/80	5/80
Complement	703.9	703.9	703.9	703.9	703.9	703.9	703.9	703.9	703.9
Overcomplement	61	61	61	61	61	61	61	61	61
Overlap	10	10	10	10	10	10	10	10	10
CETA (on hand)	32	18	17	15	15	11	7	6	5
Intermittents	4	4	4	4	4	4	4	4	4
Total	810.9	796.9	795.9	793.9	793.9	789.9	785.9	784.9	783.9
(WEP									
-assigned	0	10	10	10	10	17	17	17	17
-on hand)	0	0	9	10	9	9	13	12	12