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United States District Court, E.D. Pennsylvania.

Martin HARRIS,
v.
The CITY OF PHILADELPHIA.

No. CIV.A. 82-1847. | Aug. 30, 2000.

Opinion

MEMORANDUM AND ORDER

SHAPIRO

***1** The court has been asked to approve a settlement agreed upon by the plaintiff class (past, present and future inmates of the Philadelphia Prison System), and the defendant City of Philadelphia which would terminate this court's jurisdiction.

The court preliminarily approved the settlement on July 14, 2000 and set a hearing for July 27, 2000. Notice of the hearing was published in the Philadelphia Daily News and the Philadelphia Inquirer, posted in every housing unit at PPS and distributed to all block representatives. Ten class representatives chosen by plaintiffs' counsel were present in court at the hearing. In response to the notice two letters from inmates were received and made a part of the record at the hearing on July 27th. The court also received a copy of a letter from the District Attorney to the City Solicitor discussing the proposed settlement agreement. For the reasons that follow, the court will approve the Settlement Agreement between the parties dated June 28, 2000.

I. ***History of the class action***

A. ***1986 Consent Decree***

In 1982, inmates at Holmesburg Prison filed a class action complaint against the City of Philadelphia and individual Philadelphia officials for overcrowded conditions in violation of the First, Eighth, Ninth and Fourteenth Amendments of the U.S. Constitution. This court's abstention from exercising jurisdiction was reversed on appeal and the action was remanded for disposition on the merits.[1]

The parties then entered into the 1986 Consent Decree; the plaintiff class was redefined to include all past, present, and future Philadelphia Prison System inmates.

In that Consent Decree the City agreed to construct a downtown detention center with a capacity of "at least 440 beds" by December 31, 1990. At that time the prison population was approximately 4,300. The City agreed the number of inmates in Philadelphia Prison System facilities would be limited to 3,750 and if that limit were exceeded, "persons held either on the lowest bail or persons sentenced to the Philadelphia prisons with less than sixty (60) days remaining to serve on their sentences" would be released. *See* 1986 Consent Decree ¶ 4. If the maximum allowable population ("MAP") were still exceeded over a certain period of time, the Consent Decree provided for a qualified admissions moratorium prohibiting the City from admitting to its prisons any additional inmates, except persons charged with, or convicted of, murder, forcible rape, or a crime involving the use of a gun or knife in the commission of an aggravated assault or robbery, until the population of the PPS was within the MAP.

On November 13, 1987, on unopposed motion of the plaintiff class, the court appointed a Special Master, William Babcock, Esq.[2] to assist the court in monitoring compliance with the Consent Decree.

As of June, 1988, 3,981 persons were detained in Philadelphia prisons so a qualified admissions moratorium went into effect. However, the moratorium enforced by the court was more limited than provided by the terms of the Consent Decree because, in addition to the other excepted offenses provided for by the Consent Decree, persons charged with felonies involving enumerated amounts of narcotics were excepted. It also applied only to pretrial detainees (then approximately 75% of the prison population) and not to sentenced inmates. No state sentences were ever reduced, nor were any inmates released on parole to reduce the prison population.

***2** Following modified implementation of the qualified admissions moratorium, the combination of restricted admissions and qualified release for persons awaiting trial under supervision still did not achieve compliance with the Consent Decree. By Order of July 29, 1988 the City was directed to implement a house arrest/electronic monitoring program for selected inmates. The electronic devices monitored the whereabouts of a released inmate at all times. The electronic monitoring program, now in operation for over a decade, is currently an alternative to incarceration for over 800 persons.

In response to successive motions by the District Attorney, the court allowed additional moratorium modifications increasing the number of accused persons admitted to prison. To compensate, the court instituted a release program authorizing the City's contracted representative, the People's Bail Fund, to post bail for certain pretrial detainees with pre-release screening and post-release supervision. These compensatory measures also failed to control the population increase.

To meet what were then crisis conditions in the prison, the court, after hearings, again modified the Consent Decree[3]. Specifically, the court authorized the People's Bail Fund to post bail in greater amounts than before, if a pretrial detainee otherwise met requirements; the court also modified the exception that permitted the admission and pretrial release of persons with two outstanding bench warrants. The court ordered that a pretrial detainee admitted on a bench warrant be given a hearing within 48 hours of incarceration. If such hearing was not held within that time period, the detainee was released.

These modifications also failed to lower the population to acceptable limits. The parties suggested, and the court approved, other measures to reduce the prison population or increase prison capacity. The City renovated Laurel Hall and converted it from a work-release facility to a minimum-medium security prison with a capacity for 175 inmates. To replace the lost work-release beds, the City contracted for 100 male work-release inmates to be placed at Francis House.

At the direction of the court, the City also contracted with the Greater Philadelphia Center for Community Corrections for the use of twenty-five minimum security treatment beds for pretrial detainees. Funding was provided from penalty funds collected by the court for the City's failure to complete the renovation of Laurel Hall in a timely manner and its failure to install an improved fire alarm system at the House of Corrections.

B. ***1991 Consent Decree***

In 1989, it became evident that the City would not meet its obligation to complete the Downtown Detention Center by the end of 1990. Agreeing that more prison beds, better prison planning and greater efficiency in the administration of justice were needed, the City and the plaintiff class entered into a supplemental consent decree in 1991. The 1991 Consent Decree strengthened the population control measures, renewed the City's obligation to construct additional prison facilities, and obligated the City to enter into a planning process to bring City prisons up to industry standards with a number of beds adequate for the projected inmate population. The 1991 Consent Decree did not supersede the entire 1986 Decree, but replaced certain of its provisions.

***3** Relief, both short and long term, for the overcrowded facilities was anticipated by the 1991 Decree. The short term relief included expanded capacity and early release of eligible pretrial detainees. Thus, the court has overseen the construction and completion of an additional prison facility, Curran Fromhold Correctional Facility ("CFCF"), and a new criminal courthouse, the Criminal Justice Center at 12th and Filbert Streets in Center City, Philadelphia. The Holmesburg facility, from which the action originated, has been closed. In addition, the Alternative and Special Detention Central Unit ("ASDCU"), a minimum security facility was built. After extensive litigation over compliance with industry standards, *see Harris IV,* n. 1, the parties reached a settlement requiring the City to provide job, vocational or educational programs to all inmates housed there. The court approved the settlement on March 31, 1995.

The City is currently building a new Women's Detention Facility to increase female capacity. The City does not intend to close or renovate the House of Correction as set forth in the City's Ten Year Plan.

In accordance with the 1991 Consent Decree and as set forth in its Alternatives to Incarceration Plan, the City has contracted for community-based substance abuse treatment and support services for paroled inmates in a program called Forensic Intensive Recovery ("FIR"). Its purpose is to enhance community safety by reducing criminal recidivism in providing supervised treatment of substance abuse and mental illness as an alternative to incarceration. There are currently fifty-three drug and alcohol programs providing clinical evaluation, residential treatment, or intensive outpatient treatment services to over 1200 participants as an alternative to incarceration. The recidivism rate of program participants has been significantly lower than that of inmates not in the program: it is a true success story. The court hopes that the City will continue to support this worthwhile endeavor.

As a short term measure, the 1991 Consent Decree provided for the release of certain inmates by the Special Master. The City submitted to the Special Master the names of 35 pretrial detainees per day, five days per week, whenever the MAP was exceeded. Those inmates charged with murder, attempted murder, forcible rape, attempted rape, involuntary deviate sexual intercourse, corrupting the morals of a minor, arson, kidnaping, aggravated assault, a crime of violence committed or attempted with a firearm, knife or explosive, escape or domestic violence, or abuse, were not eligible for release. The goal was to release non-violent inmates, and keep violent offenders incarcerated.

The District Attorney was given the opportunity to object

to each proposed release. If the objection was on grounds of public safety considerations, that inmate was not released if the District Attorney designated the name of another eligible pretrial detainee.

***4** In 1994, the court stated that it was prepared to stay the qualified admissions moratorium and pretrial release mechanism if defendants were prepared to implement the strategies developed in their Alternatives to Incarceration Plan involving the development of pretrial release guidelines. The Population Management Committee, which included representatives from the First Judicial District, the District Attorney's Office, the Public Defender's Office and the Mayor's Office, met over a lengthy period of time to create and approve these guidelines. The guidelines were approved by the Committee on October 13, 1995.

On October 18, 1995, at the City's request, the court: 1) stayed the provisions of the 1991 Consent Decree establishing the court release mechanism; and 2) returned authority and responsibility for admissions and releases to the local state courts. Deputy Managing Director Dianne Granlund has been responsible for the administration of the City's release mechanisms. The court has released no inmates since 1995.

As a long term measure to control the population, the 1991 Consent Decree provided for the implementation of comprehensive administrative policies and procedures, expansion of inmate capacity, and City planning for any expected increase in the prison population.

In the years following approval of the 1991 Consent Decree, plans required by the Consent Decree were created by the PPS, reviewed by plaintiffs' counsel and, submitted to the court for approval. In accordance with the required Prison Planning Process established by the Consent Decree, in January, 1994, the City submitted a plan to govern the next decade of growth at PPS. It was titled the "Ten Year Plan." After extensive negotiation between the parties, the Ten Year Plan was approved by the court on January 24, 1996.

In addition, the court has approved the following plans:
* Classification Plan (approved 10/27/92)

* Population Projections Plan (11/23/92)

* Operational Standards (12/9/92)

* Alternatives to Incarceration Plan (12/19/94)

* Physical Standards (7/11/95)

* Capital Projects Management Plan (6/2/97)

* Training Plan (3/16/98)

In addition, over 250 policies and procedures covering everything from inmate mail to security procedures have been drafted by the City and negotiated by counsel for the City and the plaintiff class, under the supervision of the Special Master. These policies have been approved by the court in a series of orders beginning in 1994 and ending in January, 1999. The Office of the Special Master, assisted by court-appointed experts where necessary, has monitored implementation of the policies and procedures. Fourteen comprehensive reports, detailing compliance or non-compliance of the PPS with its internal policies and procedures, were issued[4]. Where appropriate, suggestions were made for changes to the practice and/or policies under review.

Throughout this litigation the court has closely monitored the City's compliance with the Consent Decree and all subsequent orders of the court.[5] The two Special Masters and assistants appointed by the court obtained information through regular visits to the prisons, interviews with prison staff and inmates, and review of prison records. The court, with and without the Special Master, also visited the prisons to oversee compliance with the court's orders. For example, before approving the 1991 Consent Decree the court held twenty-nine conferences on the compliance reports submitted by the Special Master.

***5** If the court approves the Settlement Agreement, additional oversight responsibility will fall naturally to the Board of Trustees of PPS, an independent group of citizens appointed by the Mayor under the Home Rule Charter. *See* Home Rule Charter (1951). The Charter states that the Board of Trustees "... shall have direction and control of the management" of the Prisons. *Id.* at § 5.5-701. Until recently, the Board served a relatively subservient role; the Board has begun to take a more active role in the activities of the PPS, as evidenced by the presence of two members of the Board,[6] including the Chairman, Shane Creamer, Esq., at the hearing on the Settlement Agreement held on July 27, 2000. The court is encouraged by the Board's desire to exercise its legitimate oversight authority and welcomes that effort.

C. *Use of Penalty Money*

Since 1991, a total of $864,000 has been deposited by the City as payment of penalties for violating court orders. For example, $78,000 was deposited with the court in 1992 for failure to submit physical plant standards when required. Those penalty funds have been used exclusively for the benefit of inmates. The court, with the agreement of the parties, has funded vocational programs at the PPS, urged and funded the establishment of the FIR program, New Directions for Women (a treatment facility for women offenders), a paralegal at the Defender

Association whose sole responsibility is to investigate claims of illegal detention, the Pennsylvania Prison Society and a group called "Books through Bars" to provide reading material to inmates. This incomplete list exemplifies the programs and projects for which the penalty money was expended. The approximately $460 remaining will be given to plaintiffs' counsel to establish an escrow fund to benefit inmates.

D. ***Pending Contempt Petition***

In July, 1999 the plaintiffs filed a Petition for Entry of an Order to Show Cause why Defendant should not be held in Contempt of Court on the basis of eight alleged violations of the Consent Decrees and related orders. The court held hearings on the Petition and Answer on October 7 and 8 (at PPS), 1999, November 12, 1999 and November 29, 1999. At the request of the parties, the court has withheld ruling on the motion pending the conclusion of settlement negotiations.

At the same time, the prison population has increased from approximately 4,300 inmates at the time this action was commenced, to over 7,000 within the past month. It appears that the planning by the City has failed to anticipate and provide for either the passage of legislation requiring mandatory minimum sentences or the increasing tendency to incarcerate by many participants in the criminal justice system.

One count of the pending motion alleges that the City is in contempt of court by housing as many as six inmates in CFCF rooms initially designed as social worker offices and storage space. The plaintiffs argued that this practice violates the 1986 Consent Decree prohibiting the City from housing inmates in areas "not set up for permanent housing." *See* 1986 Consent Decree, ¶ 2(a).

***6** When CFCF was built, one room on each self-contained unit, or pod, was intended for use as a social worker room. The social workers' union objected to such use because of possible danger to its members. Two additional rooms per pod were multi-purpose rooms. None of the 51 rooms (three rooms on each of 17 pods) had sinks, toilets or partitions for sleeping areas.

As the population increased, the Commissioner authorized the use of those rooms for multiple occupancy housing. Three double-decker bunk beds, providing sleeping facilities for six inmates, were placed in each room with footlockers for six inmates. To provide toilet facilities, the cell next to each room was left unoccupied and open for inmates of the multi-occupancy rooms. To allow use of the toilet facilities all night, the multi-occupancy rooms were left unlocked. The rooms have been used for housing continuously since July or August, 1998.

Two letters concerning conditions in the multi-purpose rooms at CFCF were received by the Special Master and made a part of the record at the July 27 settlement hearing. Additionally, several inmate representatives discussed the improper use of multi-purpose rooms for permanent housing in their statements at the hearing.

The City has promised on numerous occasions to add plumbing to the multi-purpose rooms; four rooms have already been outfitted with sinks and toilets in a pilot project to determine the feasibility and expense of the construction. At the July 27 hearing on the Settlement Agreement, counsel for the City stated that the City intends to add plumbing to all 120 possible rooms, rather than the 93 originally planned.

Funding for both the Criminal Justice Center and CFCF relied upon bonds secured by a Trust Indenture. The Trust Indenture provided that "all contracts for the construction of the Detention Facility and the Criminal Justice Center, must be approved by the U.S. District Court for the Eastern District of Pennsylvania prior to their award." The court has approved all contracts relating to construction of those facilities.

The court, at the request of then-City Capital Program Director, authorized the transfer of $2,314,105 in bond issue funds to the CFCF account specifically to fund plumbing installation in the multi-purpose rooms. Both parties agree that the termination of this action and the court's relinquishment of jurisdiction will not affect the court's authority pursuant to the Philadelphia Municipal Authority Trust Indenture with respect to the renovation and installation of toilets and sinks in the multi-purpose rooms at CFCF. The City Solicitor has also confirmed, in a letter to the court dated August 2, 2000 and attached hereto as Exhibit 1, that the City is committed to carrying out the plumbing project as expeditiously as possible. The court will continue its fiduciary duty to the bondholders to ensure that the funds are used appropriately by the City. Therefore, the court will not terminate its jurisdiction over the bond funds with respect to the plumbing contracts for the CFCF multi-purpose rooms.

II. ***Settlement Agreement***

***7** The court's function is to assess the fairness of the proposed settlement. *See In re: The Prudential Ins. Co. of America,* 148 F.3d 283, 316 (3d Cir.1998). The court cannot alter the agreement of the parties, but can simply approve or reject the agreement. The proposed settlement must be fair, reasonable and in the best interests of all those who will be affected by it. *See id.;* 7A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1797.1 (2d ed.1986).

The Agreement provides that the inmate class agrees to withdraw the pending Contempt Petition and agree to the termination of the 1986 and 1991 Consent Decrees. The City agrees to:
(1) Maintain monitoring compliance with a wide array of PPS policies and procedures for two years through the offices of an independent Supervising Consultant and expert consultants in the fields of health care, mental health, environmental health, sanitation, and safety. The consultants' findings will be given promptly to the City Solicitor and the PPS Board of Trustees.

The consultants will also make recommendations for changing policies and procedures and improving conditions of confinement as they deem appropriate;

(2) Make specified renovations to the House of Correction on a schedule requiring completion by September 2003. These repairs include:

a) installing additional electrical amperage and circuit breakers;

b) installing new security lighting fixtures in each cell and day space;

c) installing a new electrical receptacle and switch in each cell;

d) removing and replacing 650 window units;

e) installing a temperature control system;

f) installing an exhaust system;

g) providing inmates with access to a central laundry;

h) installing sinks in shower rooms;

i) installing a janitor's sink in a room on each block dedicated to maintaining housekeeping equipment and supplies.

Failure to comply with these conditions by the City would result in daily penalties. Any dispute as to performance of the conditions would be subject to arbitration. Any penalties paid as a result of a breach of the Settlement Agreement would be distributed by plaintiffs' counsel to groups who do work beneficial to inmates or ex-inmates of PPS.

III. *Prison Litigation Reform Act* ("PLRA")

The Prison Litigation Reform Act (18 U.S.C. § 3626) became effective on April 26, 1996. The PLRA "has restricted courts' authority to issue and enforce prospective relief concerning prison conditions...." *Miller v. French,* 530 U.S. 327, 120 S.Ct 2246 (2000).

The termination provisions of the PLRA, 18 U.S.C. § 3626(b)(2), state that the defendant is "entitled to immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." The court must "promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions." *Id.* at § 3626(e)(1). Prospective relief is defined as "as relief other than compensatory monetary damages", *id.* at § 3626(g)(7), and relief specifically includes "consent decrees." *Id.* at § 3626(g)(9).

***8** In *Miller,* state officials had moved to terminate a permanent remedial order concerning prison conditions. The inmates moved to enjoin operation of the automatic stay under the Due Process clause and separation of powers doctrine. The Supreme Court held that the automatic stay provision of the PLRA does not violate the Constitution, and that courts may not use their equitable powers to suspend the stay.

In *Imprisoned Citizens Union v. Ridge,* 169 F.3d 178 (3d Cir.1999), Pennsylvania prison officials moved to terminate a 1978 consent decree concerning prison conditions in the Commonwealth. Inmates opposed the motion, arguing that the PLRA termination provisions were unconstitutional. The court held that the PLRA termination provisions were constitutional against separation of powers and equal protection challenges.

If the City moved to terminate the Consent Decrees the court would be required to rule within 90 days or the automatic stay provision would invalidate the Consent Decrees, even if the prospective provisions might later be reinstated. *See* 18 U.S.C. § 3626(e)(1). Even if the court later found violations of federal rights, the administrative chaos following the stay and reinstatement of prospective relief would be burdensome. *See Miller,* 120 S.Ct at 2261.

IV. *Objections and Comments Received by the Court*

A. Comments of the District Attorney

Prior litigation, *Harris II* and *III,* n. 1, has established that the District Attorney is not a party to this case and has no standing to appeal approval of the settlement. Still, the District Attorney has filed of record a letter dated July 26, 2000 to the City Solicitor, a copy of which was sent to the court and counsel for the parties. The District Attorney does not object to the settlement agreement entered into by the parties, but encourages the City to build additional

prisons if it does not have sufficient bedspace to accommodate its current *and* anticipated prison population (emphasis in original). It is ironic that the District Attorney led the efforts to enact the PLRA, legislation denying a federal court the power to order an increase in prison capacity. Had the District Attorney worked with the City and indeed, the court, to encourage the building of additional prison facilities such as a replacement for the House of Correction, it might have become a reality under court supervision.

The District Attorney also advises that she believes it "unwise for the City to agree that any penalty monies paid to the plaintiffs shall be distributed at the discretion of plaintiffs' counsel, 'to an organization or institution engaged in work that is beneficial to the inmates of the PPS or to ex-inmates of the PPS'." It is clear that City attorneys had confidence in the ability of plaintiffs' counsel to disseminate any funds to appropriate institutions. It is an affront to his integrity to insinuate that he may not be trusted to choose the beneficiaries of funds available for his clients. The court has observed, both in and out of court, the demeanor and behavior of plaintiffs' counsel, David Richman, Esquire, a partner in Pepper Hamilton LLP, in this action for almost two decades. The court is confident that Mr. Richman will choose appropriate beneficiaries, should penalty funds become available by the terms of the Agreement.

***9** The District Attorney is also concerned whether the City's Supervising and Expert Consultants, will receive information which would "compromise law enforcement or which would be in violation of any laws governing the dissemination of information." The court cannot believe City attorneys would compromise law enforcement or knowingly violate any laws, nor would this Settlement Agreement require them to do so. The District Attorney may, of course, prosecute any illegal conduct occurring within her jurisdiction.

The District Attorney appears to be under the mistaken impression that Deputy Managing Director Dianne Granlund "cancels most of the writs which are issued to bring inmates in non-Philadelphia prison to court in Philadelphia." A writ to bring an inmate in state custody into Philadelphia County is addressed neither to Ms. Granlund, nor to the City of Philadelphia. Rather it is addressed to the Superintendent of the State Correctional Institution that houses the inmate. In practice, the Philadelphia Sheriff's Office faxes such a writ to the individual state institution. Deputy Managing Director Granlund then informs the Sheriff whether there is or is not sufficient bedspace in the Philadelphia Prison System to house the inmate at the relevant time.

It is the City's position, and the court agrees, that if no beds are available at PPS to house a particular state inmate, the state court should make arrangements with the state to provide other accommodations. *See County of Allegheny v. Commonwealth,* 498 A.2d 402, 507 Pa. 360 (1985). The District Attorney should urge the State, as she has urged the City, to provide such additional state capacity by funding expansions or making other arrangements.

Ms. Granlund does not have the authority to cancel writs. She does and should notify state facilities when the overcrowded county facilities cannot accommodate additional inmates. The efforts of Ms. Granlund to control the prison population by encouraging the enforcement of bail guidelines and managing bedspace at PPS have been outstanding. None of the "concerns" of the District Attorney warrant rejection of the Settlement Agreement.

B. Letters from Inmates

In response to the notice given to inmates, the court received two letters prior to the hearing and two subsequent. Three complained about conditions in the multi-purpose rooms at CFCF. None objected to the settlement, and three requested inclusion in any monetary settlement, but no funds are provided to the class in this settlement.

C. Statements of Class Representatives

The court heard from ten inmates at the hearing held on July 27, 2000. All three inmates from CFCF were concerned about the lack of toilets and sinks in the multi-purpose rooms used for housing. They noted that the opening of CFCF was intended to alleviate overcrowding, but the use of the multi-purpose rooms for housing has exacerbated tensions.

Another CFCF inmate, Tyrone Jackson, criticized the ratio of one social worker for each 150 inmates. John Keyes, also at CFCF claimed that maintenance contracts were not being enforced, and that sanitation was affected as a result.

***10** Some women inmates were concerned about the lack of rehabilitation opportunities at ASDCU. An inmate at the Detention Center, Edward Rivera, expressed his concern that the settlement agreement might not be enforced. No inmate stated that he or she objected to the settlement. All stated the continued monitoring required by the Settlement Agreement was an important, positive achievement.

V. *Analysis*

The court reviews a proposed Settlement Agreement that would, if approved, terminate the jurisdiction of the court.

The proposed Agreement requires that the plaintiff class withdraw its pending Contempt Petition, agree to termination of the 1986 and 1991 Consent Decrees and dismissal of this case with prejudice. In exchange the City agrees to hire, for a period of not less than two years, independent professionals as consultants to monitor the conditions of confinement within the PPS. The City also agrees to make certain listed improvements to the physical plant of the House of Correction. Failure of the City to implement the agreement will subject it to specific monetary penalties.

It is with some concern that the court will approve this settlement. After eighteen years, the population of the Philadelphia Prison System has nearly doubled. Although new facilities have been, and are being built, they are immediately filled beyond capacity. In CFCF, completed in 1995, inmates have been housed in rooms without plumbing that were originally intended to be offices or multi-purpose rooms. The Ten Year Plan proposed by the City in 1994 contemplated closure of the House of Correction and two smaller facilities, Mod 3, and the Cannery. The House of Correction, almost 100 years old, was deemed not worthy of repair in 1994. Now, six years later, the City agrees to repairs simply to keep the facility operable for another few years. Why then is this a fair settlement?

The answer lies in the PLRA. Congress in 1996 decreed that a federal court should not enforce legitimate consent decrees entered voluntarily by states and municipalities unless it found unconstitutional conditions. This limitation on the court's ability to enforce the 1986 and 1991 Consent Decrees makes the decrees possibly unenforceable if challenged.

As in *Miller,* the conditions at PPS have improved in some respects under court supervision. It would be difficult for the court to hold a hearing allowing sufficient time for testimony and a decision as to which, if any measures are necessary as the "least intrusive means" available to prevent or correct a continuing violation of federal law, in the time required by the PLRA. Moreover, it is not at all certain that the plaintiffs would prevail in such a presentation.

There is no doubt that the conditions at PPS at the time this lawsuit was filed would have survived a PLRA challenge. But the improvements over the ensuing years make the result of a present challenge unclear. The only thing clear is the time, expense and uncertainty of the litigation. The PLRA ninety day time limitation would also make the status of the 1986 and 1991 Consent Decrees uncertain over an extended time. As the dissent in *Miller, infra,* pointed out:

> ***11** Suppose that a district court, in 1980, had entered an injunction governing present and future prison conditions. Suppose further that in 1996 a party filed a motion under the PLRA asking the court to terminate (or to modify) the 1980 injunction. That district court would have no more than 90 days to decide whether to grant the motion. After those 90 days, the 1980 injunction would terminate automatically-regaining life only if, when, and to the extent that the judge eventually decided to deny the PLRA motion. *Id.* at 15.

It is possible that the City could violate some provisions of the Decrees with impunity. Should the court find the City in contempt for violating one or more provisions of the Consent Decrees, the City would probably move to vacate the decree under the PLRA. 18 U.S.C. § 3626(b)(2). Were the City to file a motion to vacate the Decrees under the PLRA neither monitoring nor funding for the HOC improvements might be made available. Of course, this agreement does not waive future claims that inmates might raise.

This proposed settlement, while less than what the City had originally promised in its 1986 and 1991 Consent Decrees, does benefit the plaintiff class. It provides for continued monitoring of conditions by consultants to be hired by the City, and requires that the City fund some House of Correction ("HOC") maintenance. The consultants are to report to the City Solicitor and to the prison Board of Trustees. The goal is continued appropriate oversight of PPS management by the proper City agencies and officials. The court is hopeful that this oversight will address the concerns raised by several representatives of the inmate class.

The City benefits from the settlement as well. It is released from federal court jurisdiction without the burden of further litigation and financial penalties for contempt. It will also benefit by the required monitoring. The court commends the City for its recognition that "the interests of the inmate class *and of the Philadelphia Prison System* favor the use ... of independent professionals as consultants to monitor and report ... on conditions of confinement within the PPS." *See* Settlement agreement at para. 7; emphasis added.

VI. *Conclusion*

Having carefully considered the positions of the parties, class representatives, written submissions and the current law, the court finds that the proposed settlement is fair, reasonable and in the best interests of the inmate class.

Eighteen years is generally the age at which a child is declared emancipated. Therefore, subject to the court's retention of jurisdiction over the bond funds for CFCF plumbing improvements as provided for by the Trust Indenture, the court approves the settlement of the parties dated June 28, 2000 and declares the City emancipated from federal court supervision of the PPS. An appropriate order follows.

ORDER

AND NOW, this 30th day of August, 2000, in accordance with the court's memorandum filed this date, the court finds that:

***12** 1. The parties entered into a consent decree on December 30, 1986 ("1986 Consent Decree") and a second consent decree on March 11, 1991 ("1991 Consent Decree").

2. On July 23, 1999 the plaintiffs filed a Petition for Entry of an Order to Show Cause why Defendant should not be held in Contempt of Court on the basis of eight alleged violations of the Consent Decrees and related orders. The City opposed the Petition.

3. The court held hearings on the Petition and Answer on October 7 and 8 (at PPS), 1999, November 12, 1999 and November 29, 1999. At the request of the parties, the court has withheld ruling on the motion pending the conclusion of settlement negotiations.

4. The parties have reached a settlement agreement which would withdraw the Petition and terminate the court's jurisdiction.

5. This is a class action pursuant to Federal Rule of Civil Procedure 23(b)(2); notice has been given to members of the class of the proposed settlement by posting at the Philadelphia Prison System and publication in local newspapers in accordance with the court's order of July 14, 2000.

6. On July 27, 2000 the court held a hearing and considered statements by counsel for the plaintiff class, ten inmate representatives, counsel for defendant, the Chairman of the Board of Trustees of the Philadelphia Prison System, representatives of the Public Defenders' Office, the District Attorney's Office and the Commissioner of the Philadelphia Prison System.

7. The plaintiff class, all past, present, and future inmates of the Philadelphia Prison System, will not be harmed by the instant Settlement Agreement.

8. The City has informed the court via letter, attached hereto as Exhibit 1 and filed of record, that it agrees that this Settlement Agreement will not affect the court's authority pursuant to the Philadelphia Municipal Authority Trust Indenture with respect to the expenditure of the City of $2.5 million of bond funds on the renovation and installation of toilets and sinks in the multi-purpose rooms at the Curran Fromhold Correctional Facility. By that letter the City confirmed its commitment to contract for and carry out that project as expeditiously as possible.

Therefore, it is ORDERED that:

1. The certified class consists of all past, present, and future inmates of the Philadelphia Prison System.

2. The notice to the class was fair and adequate and was the best practicable in the circumstances and therefore consistent with due process of law.

3. The terms of the Settlement Agreement, preliminarily approved by the court on July 14, 2000, and attached hereto as Exhibit 2, are fair, reasonable, and adequate.

4. Under the Trust Indenture dated July 15, 1991, and by agreement of the parties, approval of the Settlement Agreement between plaintiffs and the City, and this court's subsequent relinquishment of jurisdiction, will not affect the court's authority pursuant to the Philadelphia Municipal Authority Bond Indenture with respect to the expenditure by the City of $2.5 million of bond funds on the renovation and installation of toilet and sinks in the multi-purpose rooms at the Curran Fromhold Correctional Facility.

***13** 5. The clerk is directed to draw a check from the "fine account" payable to the order of David Richman, Esquire, Pepper Hamilton LLP, 3000 Two Logan Square, Philadelphia, PA 19103, for the purposes described in the attached memorandum. The fine account shall thereafter be closed.

6. On further order of the court, the City shall pay all outstanding financial obligations to the Special Master and Monitor incurred as of the date of this order and subsequent thereto until they are discharged by order of the court.

7. With the exceptions described in Paragraphs 4, 5, and 6 above, the above-captioned action is dismissed with prejudice. The clerk is directed to enter a final judgment pursuant to Federal Rule of Civil Procedure 54(b).

Footnotes

1 The appellate history of the case is as follows: *Harris v. Pernsley,* 755 F.2d 338 (3d Cir.1985)[*Harris I*], reh en banc den., 758 F.2d 83 (1985); *Harris v. Pennsylvania,* 820 F.2d 592 (3d Cir.1987)[*Harris II*]; reh en banc den., 1987; *Harris v. Reeves,* 946 F.2d 214 (3d Cir.1991)[*Harris III*]; reh en banc den.1991; *Harris v. Philadelphia,* 35 F.3d 840 (3d Cir.1994)[*Harris IV*]; *Harris v. Philadelphia,* 47 F.3d 1311 (3d Cir.1995)[*Harris V*]; *Harris v. Philadelphia,* 47 F.3d 1333 (3d Cir.1995)[*Harris VI*]; *Harris v. Philadelphia,* 47 F .3d 1342 (3d Cir.1995)[*Harris VII*]; and *Harris v. Philadelphia,* 137 F.3d 209 (3d Cir.1998)[*Harris VIII*].

2 In April, 1998 Mr. Babcock left to pursue another opportunity. With the agreement of counsel, the court appointed Betty-Ann Soiefer Izenman, Esq. as Special Master.

3 A more detailed recitation of the specific measures taken by the court may be found in *Harris v. Reeves,* 761 F.Supp. 382 (E.D .Pa.1991).

4 Each report, submitted to the court by the Office of the Special Master, was filed of record. The reports covered: use of force (filed 3/26/98 and 4/9/99); personnel procedures (7/1/98); grievance procedures (11/5/98); law libraries (12/3/98); administrative segregation (2/22/99); inmate mail, visits and phones (5/10/99); computerization (5/10/99); dental services (6/10/99); staff training (6/24/99 and 12/24/99); internal affairs (7/1/99); maintenance (7/5/99); inmate work programs (7/5/99); health care (9/27/99) and mental health (12/10/99).

5 A succession of able counsel for the City, in particular David J. Wolfsohn, Esq. and John H. Estey, Esq., have cooperated with the court in an effort to reduce the population and improve management at PPS.

6 Former Special Master William G. Babcock, Esq. has recently been appointed to the Board of Trustees. Mr. Babcock is an exceptionally gifted attorney whose judgment and skills will serve the PPS well.