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United States District Court,
E.D. Pennsylvania.

In re DELAWARE COUNTY PRISON, Jum'ah
Litigation

No. CIV. A. 94-5209. | April 13, 1995.

Opinion

MEMORANDUM

DALZELL

I. Introduction

*1 Yesterday, we held a hearing to consider the fairness of the proposed settlement agreement in this class action.¹ We heard arguments from class counsel and counsel for defendants, who both urged us to approve the settlement agreement. We also heard testimony from Barbara Walrath, the Director of Treatment Services at the Delaware County Prison, and Farid W. Rasool, an Imam who serves the prison. For the reasons that we describe below, we find that the settlement agreement is fair and will therefore approve it.

II. Analysis

The centerpiece of this action is Jum'ah, a Friday Muslim prayer service that "must be held every Friday after the sun reaches its zenith and before the Asr, or afternoon prayer." *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 344 (1987). In their *pro se* complaints, inmates of Delaware County Prison ("the prison") alleged that the prison refused to allow them to engage in Jum'ah. Some plaintiffs also challenged the prison's distribution of religious materials and funds for religious purposes. To address these two allegations, we certified the class as "[a]ll prisoners of the Muslim faith who are, or will be, incarcerated at Delaware County [Pennsylvania] Prison". *In re Delaware County Jum'ah Litigation*, No. 94-5209 (E.D. Pa. March 1, 1995) (order certifying class and approving proposed notice to class). The parties undertook an investigation of the inmates' claims and negotiated the proposed settlement at issue today.

A. Terms of the Proposed Settlement Agreement

The proposed settlement agreement addresses both the Jum'ah service and the distribution of religious benefits. First, the parties agree that up to one hundred inmates will be able to attend the Jum'ah each week. The prison will allow two services every Friday, and up to fifty inmates may attend each service. Second, although the settlement agreement does not require the prison to provide benefits—e.g., money, space, or materials—to any religion, the prison promises that it will make such distributions evenhandedly should it choose—or be required—to make distributions at all.

Part V of the settlement agreement establishes a procedure to resolve inmates' claims of prison non-compliance. If an inmate believes that the prison has not complied with the settlement agreement, he must first submit a grievance to the prison. If the inmate and the prison cannot resolve the grievance within thirty days, then the inmate may petition this Court for enforcement. If this Court orders the prison to take action and the prison fails to do so, and the parties again fail to resolve the dispute within thirty days, then the inmate may petition the Court for a contempt order.²

B. Objections Received from Inmates

On March 1, 1995, we approved the proposed Notice of class action and directed the prison to serve it. The Notice told inmates of their right to object to the proposed settlement agreement and invited them to submit their objections to counsel and to the Court.

*2 We received fourteen inmate submissions, thirteen of which objected to the settlement agreement.³ To the extent that the objections were relevant to the subject matter of the action, they fell into five categories. Six inmates objected to two Jum'ah services and argued that all Muslim inmates should be allowed to pray together. Eight inmates objected to the cap of one hundred inmates per week. Six inmates objected to perceived discrimination against Muslims in the distribution of religious materials and in taleem (religious study classes). Four inmates argued that the prison should have an Islamic chaplain. Finally, one inmate suggested that inmates on D- and J-block⁴ should be permitted to attend Jum'ah with the other prisoners. We will consider these objections in turn.

1. Objections to Two Services

Class counsel informed us at the hearing that he was

initially unsure whether the Muslim faith would permit two Jum'ah services. Some of the objections from inmates suggested that a single service was a religious *requirement*, rather than an inmate preference. Class counsel contacted Mujahid Abdul-Baeth, the Director of the Institute of Islamic Revival in Philadelphia. Mr. Abdul-Baeth submitted an affidavit in which he explained that "[u]nder normal conditions there can be only one Jumu'ah service ... per location" and that this is so "[e]ven in the case of inmates in prison". Abdul-Baeth aff. ¶¶ 6-7. Yet Mr. Abdul-Baeth concluded by emphasizing the importance of flexibility in Islamic law in appropriate circumstances. He wrote:

[I]f there is a genuine security concern on the part of the Prison, and not an illusion of one, then Islamic law is flexible and allows more than one Jumu'ah per location ... and Allah knows best.

Abdul-Baeth aff. ¶ 8 (ellipsis in original). Based on Mr. Abdul-Baeth's statements, class counsel concluded that Islamic law would permit two Jum'ah services as long as the prison's security concerns were valid.

Counsel for defendants informed us that security and money prevented the prison from exceeding the fifty-inmate limit. With respect to the prison's concerns for security, Ms. Walrath testified that the room in which Jum'ah takes place is a "tight fit" even for fifty inmates.⁵ Both Ms. Walrath and counsel for defendants emphasized that inmates always present a potential risk to security when moving outside their cells, and that this danger increases in direct proportion to the number of inmates. We find this assessment credible and that the fifty-inmate limit is a fair one.⁶ With respect to the prison's budgetary concerns, we credit counsel's assessment that a larger Jum'ah service would require additional corrections staff to oversee both the service and the inmates' movement to and from the service.

In short, we find that the prison's concerns regarding its security and its budget are legitimate, and, as a consequence, that the prison could properly refuse to allow more than fifty inmates to congregate for Jum'ah. Based on Ms. Walrath's comments, which we credit, we find that the fifty-person limitation strikes an appropriate balance between the prison's need for institutional security and the inmates' need for religious expression. Moreover, if we rejected the fifty-inmate limit we would, in effect, order the prison to increase its budget. We are especially reluctant to meddle in the difficult financial problems of prison administration, but we need not do so in the light of Mr. Abdul-Baeth's conclusion that two prison services would be consistent with Islamic law.⁷

2. Objections to the Hundred-Inmate Cap

*3 Counsel also addressed inmates' objections to the portion of the settlement agreement that limits the Jum'ah services to one hundred inmates per week. In essence, the objection to the hundred-inmate cap is a restatement of the first objection: the cap results from the maximum number of inmates that the prison can accommodate at Jum'ah and the number of services that the prison can accommodate per week. Thus, for the reasons that we have already described, we would not allow this objection to derail the settlement agreement.

Moreover, the cap does not currently exclude any inmates from the Jum'ah service. There are roughly ninety Muslim inmates currently in general population. Ms. Walrath testified that the prison has a current population of 950 and a capacity of 750. She also testified that the number of Muslim inmates has ranged from roughly seventy-five to ninety over the past two years.⁸ Although it is conceivable that the number of Muslim inmates will occasionally exceed one hundred, objections to the hundred-inmate cap are premature now. Unless the prison significantly exceeds the current population in the future, it is likely that the population of Muslim inmates will remain roughly constant, and below one hundred.

The cap is a reasonable product of compromise, and speculation about a worst-case scenario should not prevent approval of the settlement agreement.

3. Objections to Religious Materials and Taleem

Six inmates objected to perceived discrimination against Muslims in the distribution of religious materials and in taleem (religious study classes). The settlement agreement ensures that the prison will treat Muslim inmates as it treats any other religious group. Class counsel assured the Court that the prison provides study classes (taleem) for a maximum of fifty inmates per week, a figure consistent with other religious groups at the prison.

4. Demands for an Islamic Chaplain

The prison employs a chaplain, whose salary is paid by the county. The present chaplain is a Baptist but has a more general role at the prison. He schedules the visits of the prison volunteers, and he organizes meetings of the various religious groups. He conducts a Baptist service and a generic Protestant service each week.

To the extent that Muslim inmates feel excluded because the chaplain is not a Muslim, they are not alone. Every religious group other than Baptists could feel similarly excluded.⁹ Yet it seems clear that the chaplain is present at the prison to serve a broad role in the religious life of the prison, and that his particular religious affiliation is peripheral to that larger role. Thus, since it does not appear that the prison keeps anyone on its payroll to serve a specific religion, we agree with counsel that the prison need not hire a Muslim chaplain.

5. Muslim Inmates on D- and J-Block

Ms. Walrath testified that there are roughly twelve Muslim inmates on D-block and one or two Muslim inmates on J-block. Inmates on D- and J-block have their own Jum'ah services. Given the higher security risks of inmates on these two blocks, the continuation of separate Jum'ah services is manifestly reasonable.

C. Changes in Position as a Result of the Settlement Negotiations

*4 We are convinced that counsel for both sides have done an admirable job in securing improved conditions for the inmates. Prior to this action, the prison held one Jum'ah service per week and limited attendance to forty inmates. Under the settlement agreement, the prison has added a second service per week and has increased by ten the number of inmates that may attend each service. The settlement agreement's grievance procedure should allow for quick, efficient, and informal resolution of any religious complaints that may arise in the future.

We have no question that the Muslim inmates are better off as a result of the settlement of this action. Indeed, the plaintiffs may well have achieved more through settlement than they could have achieved through protracted litigation and trial. Despite the confusion in free exercise law after the enactment of the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4, both that statute and the First Amendment emphasize the importance of a prison's need for security and administrative (*i.e.*, budgetary) autonomy. *See, e.g., Allah v. Menei*, 844 F.Supp. 1056, 1062-63 (E.D.Pa.1994)

Footnotes

¹ The case began as a series of unrelated *pro se* prisoner complaints on the dockets of several Judges in this District. Chief Judge Cahn transferred the cases to our docket, and we consolidated them by Order dated December 21, 1994. Fox, Rothschild, O'Brien & Frankel agreed to represent all plaintiffs in the consolidated action, even though the firm had initially signed on for only one plaintiff. At a pretrial conference in the consolidated action, counsel agreed that a class action would provide the most satisfactory relief to both plaintiffs and defendants. Fox, Rothschild agreed to represent the class. The expanding scope of the firm's representation is all the more impressive in the light of its waiver of a fee pursuant to 42 U.S.C. § 1988, discussed below.

(analyzing the free exercise claims of prisoners under the Religious Freedom Restoration Act); *see also O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349-50 (1987) (analyzing the free exercise claims of prisoners under the First Amendment).

III. Conclusion

The settlement agreement will serve both sides. It will ensure that Muslim inmates will be able to practice their religion to the same extent as other religious groups, and it will provide clear guidelines for the prison in evaluating inmates' demands.

In response to our inquiry at the end of the hearing yesterday, class counsel informed us that it viewed its work in this action as a service to the public and to the Court, and that the firm would therefore not seek an attorneys' fee under 42 U.S.C. § 1988. The *pro bono* service of the Fox, Rothschild firm in general, and of firm members Abraham C. Reich and Frank G. Murphy, Esqs., in particular, is therefore doubly exemplary, and in the best tradition of the Bar of this Court. We are grateful to them.

ORDER

AND NOW, this 13th day of April, 1995, after a hearing yesterday in open Court at which we considered the fairness of the proposed settlement agreement in the light of the arguments of counsel, the testimony of witnesses, and the objections of certain class members, and for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

1. The objections of the class members are OVERRULED;
2. The proposed settlement agreement is APPROVED as fair and reasonable; and
3. The Clerk shall CLOSE this case statistically.

- 2 Several of the original prisoner § 1983 complaints requested money damages, and the settlement agreement provides solely for injunctive relief. Other § 1983 complaints combined a complaint regarding the Jum'ah service with complaints unrelated to their religious practices. Part III.A of the settlement agreement restricts the settlement only to the Jum'ah claims, and part III.B requires prisoners to bring unrelated claims, or claims for money damages, separately.
- 3 The number is significant to our appraisal of the settlement. Ms. Walrath testified that there are between 75 and 90 Muslim inmates. *See* page 7, *infra*. Thus, between 62 and 77 identifiable members of the class have not objected to the settlement agreement. We need not presume that the non-objecting inmates all approve of the agreement, but we do find the absence of widespread discontent to be evidence of the agreement's fairness.
- 4 Ms. Walrath testified that D-block is the maximum security block and houses first degree offenders. J-block is the protective custody block and houses, *e.g.*, sex offenders and other inmates who require segregation from the general population.
- 5 All religious services take place in a vacant room near the infirmary. The prison has placed benches around the perimeter of the room, and, thus, the center of the room remains open. The benches are bolted to the floor. This configuration allows the Muslim inmates to use the room for Jum'ah, since the inmates must kneel on the floor for the service. Ms. Walrath testified that the chow hall is large enough to accommodate 100 prisoners but that there is little floor space, since the benches and tables in that room (also bolted to the floor) are arranged for eating. Class counsel could reasonably have concluded that institutional security requires that benches and tables remain bolted to the floor, and thus there really is no physical alternative to the room near the infirmary.
- 6 It is of more than passing interest to note that historically the prison has imposed a forty-inmate limit on all religious gatherings. Class counsel negotiated a higher ceiling as part of the present settlement.
- 7 Farid W. Rasool, an Imam who serves the prison, testified that the day room in D-block would accommodate the entire Muslim population. In response, Ms. Walrath credibly outlined the security risks of moving 100 prisoners from the general population into the maximum security block.
Mr. Rasool also testified that many other state prisons in Pennsylvania allow a single Jum'ah prayer. Although we recognize that religious accommodation at other prisons plays a minor role in assessing whether the accommodation at Delaware County Prison is fair, Mr. Rasool has raised an important practical point that the prison would do well to heed. The prison might avoid future grievances by explaining the boundaries of the settlement agreement to future Muslim inmates as soon as possible after their arrival at the prison.
- 8 Because the inmate population is transitory, the exact number varies with time.
- 9 Like the Imam, a Roman Catholic priest comes to the prison to say Mass—notably, every Tuesday, not Sunday—and a Rabbi comes to the prison as needed. These men do not receive payment from the prison or the county for their services.