

1991 WL 8423

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United States District Court, E.D. Pennsylvania.

Arthur LESTER, et al.,
v.

COMMISSIONER OF PHILADELPHIA PRISONS.

Civ. A. No. 87-5893. | Jan. 22, 1991.

Attorneys and Law Firms

Arthur Lester, in pro per.

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McCaney & Gordon, Philadelphia, Pa., for plaintiff.

Guy Vilim, City Solicitor Office, Philadelphia, Pa., for
defendant.

Bruce W. Drummer, Philadelphia, Pa., for City of Phila.

Opinion

MEMORANDUM

NEWCOMER, District Judge.

*1 This was a class action filed on January 20, 1988, by Arthur Lester and other inmates at the Philadelphia Industrial Correction Center against Edward Lyons, then Superintendent of the Philadelphia Prison, and other prison officials. The class alleged that there were unwarranted acts of violence against inmates by prison staff. The parties, however, reached a settlement agreement, whereby the lawsuit was dismissed subject to the terms set forth in the agreement. A consent order was issued by this court on June 21, 1988. The plaintiff class, through counsel, is now seeking to modify the consent order.

Under the terms of the agreement, the Philadelphia Prison Society, through its employee/representative, Michael Hackman, is to investigate allegations of the use of physical force against inmates by prison officials. The Prison Society representative is to then forward incident reports and documents prepared in conjunction with the incident reports to the chairman of the Board of Directors of the Philadelphia Prisons; the Superintendent of the Philadelphia Prisons; and the Philadelphia District Attorney's office, for investigation and appropriate action.

Plaintiff class seeks to modify the Consent Order to

include the Federal Bureau of Investigation (F.B.I.) among those agencies to receive reports from the Prison Society, claiming that the F.B.I. should be included as an independent agency to prevent a "whitewash"—so that the "Philadelphia prisons [would be encouraged] to take the matters complained of seriously and [might] spur them to conduct real investigations and take disciplinary action against errant staff." Plaintiffs' brief, p. 2-3 (Docket No. 43).

Plaintiffs claim further that the District Attorney's Office is the only independent body which is in receipt of reports from the Philadelphia Prison Society, and that the reporting requirements are somehow deficient in that it is the practice of the District Attorney's office to refer allegations of misconduct of prison officials to the Northeast Detectives of the Philadelphia Police Department for investigation. Plaintiffs' counsel argues that the inmates are "suspicious of any investigation conducted by the police department," and that the reports therefore should be forwarded to the F.B.I. in order to insure "real investigations."

The standard for reopening a final Consent Order Judgment is a strict one. Consent decrees are judicial acts that have many of the attributes of contracts voluntarily undertaken. *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 226 (1975). When parties, as the parties to this consent decree, make a free, calculated and deliberate choice to submit to an agreed-upon decree rather than to seek a more favorable litigated judgment, their burden under Rule 60(b) is perhaps more formidable than had they litigated and lost. *Vecchione v. Wohlgemuth*, 558 F.2d 150, 159 (3rd Cir.) *cert. denied*, 434 U.S. 943 (1977). Moreover, modification of a Consent Order is governed by Federal Rule of Civil Procedure 60(b), which requires a showing of exceptional circumstances or that extreme and unexpected hardship will result absent modification. *United States v. Swift*, 286 U.S. 106, 119 (1932); *Apex Fountain Sales, Inc. v. Kleinfeld*, 818 F.2d 1089, 1098 (3rd Cir.1987); *United States Steel Corp. v. Fraternal Ass'n*, 601 F.2d 1269, 1274 (3rd Cir.1979); *Mayberry v. Maroney*, 529 F.2d 332, 337 (3rd Cir.1976); *Randustrial Corp. v. Dunlap*, 595 F.Supp. 873, 875 (E.D.Pa.1984).

*2 Plaintiffs, however, have failed to show any extreme circumstances or unexpected hardship. Plaintiffs have in fact failed to substantiate any of their allegations. There has been no information brought to the attention of this court indicating that the current reporting requirements are insufficient to prompt "real investigations" or that the prison does not "take disciplinary action against errant staff." Moreover, the District Attorney's practice of forwarding reports to the Northeast Detectives of the Philadelphia Police department was in place when the

parties entered into the settlement agreement. The plaintiffs, however, freely agreed to have the Pennsylvania Prison Society forward its reports of unwarranted physical force to the District Attorney's office. The plaintiff class has made no showing that investigations are not being completed, nor have they made any showing that the procedure as set forth in the settlement agreement is otherwise unworkable.

Absent such showings, this Court cannot disturb the agreement of the parties by modifying the Consent Order.

An appropriate order follows.

ORDER

AND NOW, this 22nd day of January, 1991, upon consideration of plaintiffs' Motion To Modify the consent order entered by this court on June 21, 1988, and the defendant's response thereto, it is hereby ORDERED that said motion is DENIED.

AND IT IS SO ORDERED.