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United States District Court, E.D. Michigan,
Southern Division.

Mary GLOVER, et al., Plaintiffs,
v.
Perry JOHNSON, et al., Defendants.

77-CV-71229. | Jan. 14, 1994.

Attorneys and Law Firms

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Opinion

OPINION AND ORDER

FEIKENS, District Judge.

***1** Before me are two emergency motions brought about by the Michigan Department of Corrections' (the "Department") attempts to terminate court-ordered paralegal training at the Florence Crane Facility ("Crane"). Plaintiffs have filed an "Emergency Motion for a Temporary Restraining Order and Remedies for Defendants' Contempt in Cancelling Paralegal Training at the Crane Facility." I held conference-call hearings on that motion on December 22, 1993, January 4, 1994 and January 10, 1994. At the last hearing, I ordered the Department to continue offering paralegal training classes at Crane. I also ordered the Department not to transfer prisoners in an attempt to evade the orders of this court. The Department meanwhile has responded with an emergency motion of its own. That motion is entitled "Emergency Motion for Reconsideration and to Alter the August 12, 1991 Interim Order, Or in the Alternative for a Stay Pending Appeal."

For reasons stated below, I deny the Department's emergency motion in its entirety. I also state my reasons for ordering the defendants to continue paralegal training at Crane.

Background

The long history of this case is well-documented elsewhere and need not be repeated here. *See, e.g., Glover v. Johnson,* 721 F. Supp. 808 (E.D. Mich. 1989); *aff'd in part, rev'd in part,* 934 F.2d 703 (6th Cir. 1991). It suffices for present purposes to note that plaintiffs, the class of female inmates in the custody of the Michigan Department of Corrections, filed this case in 1977 alleging various violations of their constitutional rights. During the course of these lengthy proceedings, I determined that the lack of adequately trained female legal assistants violated the plaintiffs' constitutional rights to access the courts. *See Bounds v. Smith,* 430 U.S. 817 (1977). I accordingly ordered the Department to provide qualified inmates with paralegal training. The purpose of this order was to create a pool of adequately trained female legal assistants or jailhouse lawyers. *See Glover,* 721 F. Supp. at 814. The U.S. Court of Appeals for the Sixth Circuit affirmed this decision. 934 F.2d at 710.

That my decision was affirmed by the court of appeals unfortunately did not end the matter; the parties have continued to quarrel about various details pertaining to the court-ordered paralegal program. As noted above, the present dispute rises out of the Department's recent unilateral attempt to end paralegal training at Crane. The Department maintains that interested and qualified women prisoners would be given the opportunity to transfer to the Scott facility and attend the paralegal program being offered there. The plaintiffs counter that the Department's unilateral attempt to terminate Crane's paralegal program violates the orders of this court.

1. *Plaintiffs' Motion*

Plaintiffs brought their emergency motion on December 21, 1993 in response to a December 1, 1993 letter written by Nancy Zang, Special Administrator of Female Offender Programs at the Michigan Department of Corrections, to the court-appointed monitor, Dr. Rosemary Sarri. The letter announced the Department's decision to cancel the paralegal course at Crane, explaining that the "cancellation was necessitated due to the limited interest of the women at Crane." The letter contends that only "[e]ight women responded to the

posting indicating an interest in paralegal training."[1] It continues:

> ***2** The eight women who are interested in paralegal training will now be evaluated by Montcalm Community College to determine if they possess the pre-requisite skills necessary to be admitted into the program. If these women possess the necessary skills, they will be provided the opportunity to transfer to Scott for program participation.... Montcalm will be providing paralegal training at Scott beginning in January 1994.

This attempt to unilaterally terminate paralegal training at Crane violates the express orders of this court. On August 12, 1991, I ordered that the "defendants shall forthwith implement the provision of paralegal training at *all* facilities and camps housing members of the plaintiff class ...." Interim Order of August 12, 1991 (emphasis added). This language could not be more clear.

This is not to say that the Department must continue paralegal training at Crane indefinitely. It certainly is conceivable that the paralegal training program at Crane in time will produce enough writ writers and jailhouse lawyers for the Crane facility to meet the requirements of the U.S. Supreme Court's decision in *Bounds.* Further, it conceivably might be practical to cancel the paralegal course at Crane if only a few qualified inmates show an interest. Still, if the Department wishes to terminate paralegal training at Crane, it must seek a modification of my August 12, 1991 order.[2] It has no authority to unilaterally modify an order of this court.

2. *Defendants' Motion*

After the January 10, 1994 conference-call hearing, the Department responded with an "Emergency Motion for Reconsideration and To Alter the August 12, 1991 Interim Order, Or in the Alternative For a Stay Pending Appeal." This motion is denied.

a. *The Sham Transfers*

The Department's motion raises two main points. The first concerns my order that the Department may not use its power to transfer prisoners to evade the orders of this court. The Department contends that I have no authority "to infringe on [Department Director Kenneth L. McGinnis's] discretion to transfer inmates." Defendant's Motion at 2. They maintain that I admitted as much during the December 22, 1993 hearing but that I changed my mind and later held that Director McGinnis has no authority to transfer paralegal students. This, they claim, "represents federal intrusion upon one of the most basic fundamental management prereogatives [sic] necessary to effectively operate and administer the state's correctional population, i.e., transfer of inmates." Defendant's Motion at 8. The Department accordingly claims that my action violates the principles of federalism embodied in the U.S. Constitution.

Defendant's motion takes my statements out of context. I do not intend to intrude upon Director McGinnis's authority to transfer prisoners for *valid* management and correctional reasons. The Department correctly notes that courts are well advised in most circumstances to rely upon the experience and capabilities of those charged with the management and operation of prison facilities. But I do intend to prevent the Department from using its transfer authority as a way of circumventing the orders of this court. I will restate my order for the sake of clarity. Transfers for valid reasons are permitted. Sham transfers will not be tolerated.

***3** Nor do I find merit in the Department's federalism argument. This case does not involve a federal statute, passed pursuant to Congress's commerce power, that "commandeers" state legislative processes in violation of the Tenth Amendment. *New York v. United States,* 112 S. Ct. 2408, 2428 (1992) (holding that Congress's commerce power will not justify the federal commandeering of state legislative processes). This case instead concerns plaintiffs' attempts to vindicate their constitutional rights through 42 U.S.C. § 1983, a provision designed to enforce the Fourteenth Amendment to the Constitution. The difference is this: the Fourteenth Amendment was ratified after the Tenth Amendment and accordingly is not subject to the constraints that cases like *New York* place upon Congress's commerce power. *E.E.O.C. v. Wyoming,* 460 U.S. 226, 259 (1983) (Burger, C.J., dissenting) (noting the well-established principle that Congress may invoke its enforcement power under section five of the Fourteenth Amendment to enact legislation directly affecting states); *see also Cooper v. Aaron,* 358 U.S. 1, 16-18 (1958) (reaffirming both that state executive officers are bound by the Fourteenth Amendment and that the "federal judiciary is supreme in the exposition of the law of the Constitution"). I decided in 1979 that the situation of the women's prisons in the State of Michigan violated the women prisoners' constitutional rights. *Glover v. Johnson,* 478 F. Supp. 1075 (E.D. Mich. 1979). My order of August 12, 1991 is one of a series designed to remedy that situation. My present order against sham transfers serves to protect the plaintiffs from attempts to circumvent these orders.

b. ***The Department's Motion to Modify the August 12, 1991 Order and Its Motion to Stay the Injunction Pending Appeal***

The Department also moves to modify the August 12, 1991 order, claiming that changed circumstances warrant the termination of the paralegal program at Crane. In particular, they claim that the pool of paralegal or writ writers at Crane now is sufficiently large to meet the right-to-legal-access needs of the prison population. They contend further that the program does not warrant the $60,000 cost because only a small number of interested prisoners at Crane are qualified for the program. I do not know whether these facts are true or whether they dictate the termination of the paralegal program at Crane. Determining whether the paralegal program has fulfilled it purpose would require me to make findings after a hearing on the merits. That has not occurred.

The Department also asks that I stay my order to provide paralegal training at Crane pending an appeal. That I refuse to do because granting the Department's motion essentially would defeat the purpose of granting plaintiffs' motion.

Several factors in addition to the August 12, 1991 order support plaintiffs' contention that I order the Department to continue paralegal classes at Crane. The most notable is that time is of the essence. The Department previously contracted with the Kellogg Community College to supply the paralegal program at Crane. Kellogg needs to know almost immediately whether the Department will renew its contract. The coordinator there, Alice Pierce, explained that she will be unable to engage the required instructors for the winter 1994 semester unless defendants indicate their intentions in the near future. In short, a delay will spell the end of paralegal training at Crane for the winter semester of 1994.

***4** The Department's emergency motion in essence asks me to hold a hearing and decide *now* whether the paralegal program at Crane is still needed to remedy the constitutional violation. It claims that my failure to decide this issue immediately will cost the Department the $60,000 required to run the program. It requests that "the issues raised in [its] emergency motion be given the same immediate consideration as the Court afforded the issues raised in Plaintiffs' emergency motion." Defendants' Motion at 2.

What the Department fails to appreciate is that the exigency of this motion is due to Director McGinnis's *unilateral* decision to do away with the paralegal program at Crane. As noted above, I decided in 1979 that the situation of the women's prisons in the State of Michigan violated the constitutional rights of the women prisoners. My orders pertaining to paralegal programs are designed to remedy that unconstitutional situation. Director McGinnis effectively decided unilaterally that my remedy is no longer needed. That is, he decided by himself that the situation at Crane no longer violates the Constitution. That is not his job. That is the job of the federal judiciary. *Cooper,* 358 U.S. at 16-18; *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177 (1803). A better approach would have been to raise his motion to modify the August 12, 1991 order well before the beginning of the winter 1994 semester. That way there would have been no need for these emergency motions at all.

For the foregoing reasons, IT IS HEREBY ORDERED that defendants shall continue to provide paralegal training classes at the Florence Crane Facility as previously ordered by this court in the Interim Order of August 12, 1991 and the orders and findings of contempt in *Glover v. Johnson,* 721 F. Supp. 808 (E.D. Mich. 1989), *aff'd,* 934 F.2d 703 (6th Cir. 1991). IT IS FURTHER ORDERED that defendants immediately take all necessary steps to continue paralegal training at the Crane Facility, including the winter 1994 semester beginning in January 1994, for all interested and eligible women as specified in *Glover v. Johnson,* 510 F. Supp. 1019 (E.D. Mich. 1981). IT IS FURTHER ORDERED that defendants shall not transfer plaintiffs interested and eligible for paralegal training at Crane in order to avoid compliance with this court's orders. IT IS FURTHER ORDERED that defendants' Emergency Motion for Reconsideration and to Alter the August 12, 1991 Interim Order, Or in the Alternative For a Stay Pending Appeal IS HEREBY DENIED.

Footnotes

1 Further inquiry has revealed that up to twelve eligible women are interested in the program.

2 The Department has in fact moved to modify my August 12, 1991 order. But it made this motion *for the first time* during the telephone conference hearings and in their emergency motion. Before now, they simply ignored the authority of this court and acted unilaterally.