

1997 WL 5910

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United States District Court, S.D. New York.

James BENJAMIN, et al., Plaintiffs,

v.

Michael P. JACOBSON, et al., Defendants and
related cases.

No. 75 Civ. 3073 (HB). | Jan. 7, 1997.

Opinion

MEMORANDUM AND ORDER

BAER, District Judge:

*1 Beginning with a letter dated December 5, 1996, from defense counsel, the Court was apprised that plaintiffs' counsel had suggested continuation of the Office of Compliance Consultants ("OCC") for another two year period. The defendants opined "[t]he motions underlying OCC's creation are now stale, ... and no longer justify OCC's perpetuation." Attached to the letter was the most recent order bearing on OCC's existence and dated February 14, 1995 (the order under which OCC is currently operating), as well as the initial order creating OCC.

OCC was created to act as a neutral third party to assist the defendants achieve compliance with the Consent Decrees and related orders and to assist the parties resolve disputes as to compliance problems. OCC provides valuable services in documenting the defendants' compliance and provides the Court and the parties with regular reports assessing compliance and compliance issues. OCC also assists the parties develop work plans to help bring the defendants into compliance. These work plans set forth timetables for compliance and improvement of discrete problems, such as food service and environmental health.

Following the defendants' December 5 letter in fairly rapid succession was a letter from the plaintiffs dated December 9, a letter from defendants dated December 10, a declaration from Lorna Goodman, Esq. and a memo from defendants dated December 10, a conference before me, another letter dated December 11 from the defendants, a letter from the plaintiffs dated December 17, a declaration from John Boston, Esq. and a reply memo from plaintiffs dated December 17, a letter from defendants dated December 17, a further declaration from

Lorna Goodman, Esq. dated December 17, and yet another letter from plaintiffs dated December 19. I catalogue the papers submitted simply so that the record may be complete. Basically this is a motion dealing with the status of OCC and the potential effects of the Prison Litigation Reform Act.

OCC came into existence via a consent order in 1982 and Mr. Kenneth Schoen was appointed to head the office. He has continued to head the office ever since. Several consent renewals occurred thereafter and then in 1987, the Court in its order wrote in part as follows:

[T]he parties having been unable to resolve a renewal of said Stipulation for the continuation of the operation of the Office of Compliance consultants; and *the Court having concluded* that in order to secure compliance with the Court's orders in these cases it is necessary that the Office of Compliance Consultants shall continue for another twenty-four months (emphasis mine)

Thus, since 1987 OCC may owe its existence to a judicial judgment and not the defendants' consent. This may make a difference as to the foundation on which the City objects to the continuation of OCC but it is only one of several concerns. Those concerns include what Congress meant by the word "relief" in the PLRA, 18 U.S.C. § 3626(a)(1), and whether it encompasses OCC; whether OCC is a special master under § 3626(f) whose appointment must be made in accordance with the legislative guidelines set forth in the Act; and whether the PLRA special master provision applies retroactively to long-extant appointments.

*2 I recently visited Rikers Island accompanied by members of the staff of the Corporation Counsel, the Legal Aid Society and OCC. There continues to be, in my view, at least in the areas of maintenance and fire safety, a necessary and beneficial role for OCC. More importantly, the Second Circuit stayed this Court's decision dealing with the constitutionality of the PLRA dated July 23, 1996, and it was seemingly their intent to maintain the status quo, the usual underlying goal for any kind of injunctive relief. *See Warner Vision Entertainment Inc. v. Empire of Carolina*, 101 F.3d 259 (2d Cir. 1996). As this Court and the Second Circuit have granted three separate stays to continue to maintain the status quo, I decline to order a dissolution of OCC at this time.

CONCLUSION

For now, OCC will continue as if the proposed prospective order had been signed. Following a decision by the Second Circuit on the appeal from my July 23, 1996 Opinion, now *sub judice*, a conference with the attorneys will be scheduled to determine, based on that decision, whether further consideration of the City's

application is appropriate and necessary. If so, the specific areas that require briefing as well as a date for oral argument will be scheduled.

SO ORDERED.