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

James BENJAMIN, et al., Plaintiffs,
v.
Michael P. JACOBSON, et al., Defendants.

No. 75 Civ. 3073(HB). | April 15, 1997.

Opinion

OPINION AND ORDER

BAER, District Judge.

*1 For the reasons discussed below, and in accordance with the discussion at the conference held between the parties and the Court on March 5, 1997, defendants are hereby ordered to provide the Office of Compliance Consultants with a Fire Safety Master Plan and an update as to the status of the renovations of the wood modulars on or before April 28, 1997.

I. OCC's Mandate

The Office of Compliance Consultants ("OCC") was established "to advise and assist the defendants in achieving compliance with the Consent Judgments and to informally assist the parties in resolving disputes as to compliance with the Consent Judgments." Stipulation and Order dated June 18, 1982 at ¶ 1. By Order dated January 7, 1997, I continued the mandate of OCC at least until such time as the Second Circuit rules on the appeal from my decision under the Prison Litigation Reform Act of 1995 (the "Act"), Pub.L. No. 104-134, 110 Stat. 1321, §§ 801-810 (Apr. 26, 1996), dated July 23, 1996. The purpose of my January 7 Order, as stated therein, was to maintain the status quo pending resolution of the constitutionality of the Act. It is with that purpose in mind, and in recognition of what appears to be the defendants' unwillingness to cooperate with OCC in the pursuit of its mandate that I am issuing this Order. It will provide OCC with information it has sought, needs and is entitled to receive in order to fulfill its mission. In the unlikely circumstance of a misunderstanding by the defendants, it is important to remember that so long as the stay of this Court's July 23, 1996 decision is in effect, the parties are required to abide by all effective consent decrees and related orders, including the order

empowering OCC to continue to act in its capacity as third party neutral.¹

OCC's most recent order of mandate (prior to my Order of January 7, 1997) specifically provides that OCC shall "have unlimited access to all records and documents required to be maintained by the Judgments, and *any other records and documents maintained by defendants* " and that defendants "*shall cooperate with [OCC] and respond directly and promptly to all oral or written inquiries and/or requests related to compliance with the Consent Judgments.*" Order, Feb. 14, 1995 at ¶¶ 1(a) & 1(c). Furthermore, the order specifically empowers OCC to "set forth any ... recommendations regarding compliance and the need, if any, for supplementary remedial action ... necessary to secure compliance with the terms of the Judgments." *Id.* at ¶ 3(e).

With this background in mind, I provide some history from OCC records of the path traversed by the defendant with respect to what I regard as two major safety-related concerns: fire safety and wood modular prisoner accommodations. In each area, OCC has recently made requests to which the defendants have failed to respond adequately. The first request deals with the defendants' Fire Safety Master Plan. The second addresses the progress of repairs to wood modular units used by the Department of Corrections to house inmates. I cannot emphasize too strongly that both are of great concern to the Court and I hope to the parties.

II. Fire Safety Plan

*2 The 1978 Consent Decrees require the Department of Corrections ("DOC") to maintain a "clean, healthful [and] safe" environment in its jails. (Stipulation for Entry of Partial Final Judgement at Section S.) The parties have long treated fire safety as an element of this decree obligation. In 1983, in OCC's first year of existence, OCC undertook to address environmental health issues and DOC established a "task force" to develop a compliance plan. (OCC Progress Report # 4 at 4, and Project Environmental Health at 1, attached to Report # 4.) It is interesting to note that, so far as my review reveals, both sides embraced the inclusion of fire safety, under the rubric of environmental health, amongst the issues to which OCC was to address its attention. In its April 1984 report, the DOC task force "recognize[d] the need for additional personnel to deal with environmental health and fire safety problems." (OCC Progress Report # 5 at 8.)

In 1988, OCC engaged an environmental health expert, Ted Gordon, to tour DOC facilities and to advise OCC and the parties of his findings. Mr. Gordon found "[o]vert

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fire safety hazards, e.g., combustion dangers, absence of fire warnings, exit signs and evacuation plans.” (OCC Progress Report # 19 at 27.) DOC subsequently agreed to provide OCC and Legal Aid with a date by which it would produce cost estimates and a plan for remediation of fire safety issues. However, the date was never provided, and neither the cost estimates nor a remediation plan were ever received. (OCC Progress Report # 22 at 10.) In August 1990, the City retained a consulting firm, Silver and Ziskind, to conduct a comprehensive examination of the infrastructures of Rikers and North Brothers Island, which included an extensive evaluation of fire alarm systems. Silver and Ziskind’s findings and recommendations, which were presented to OCC and Legal Aid in June 1991, provided the basis for DOC’s 1992 Fire Safety Master Plan. (OCC Progress Report # 31 at 2–3.)

In late 1989, DOC’s own internal Fire and Safety Unit began reporting serious violations in the jails. For example, the fire alarm system at the Otis Bantum Correction Center was deemed “unreliable and/or inoperable”, and was reported to have been in this condition since shortly after the jail opened in 1985. (DOC, Fire and Safety Unit, Fire and Safety Inspection of Otis Bantum Correction Center, October/November 1989, at 1.) Again in February 1992, the Fire and Safety Unit reported that the George R. Vierno Center was “without an operable smoke/fire alarm system” and that “[t]his condition has existed since the facility opened for operation in 1991.” (DOC, Fire and Safety Unit, Fire and Safety Inspection of the George R. Vierno Center, February 1992, at 1.) Later that year, the Unit reported that the fire alarm, smoke detection and smoke purge systems at the Manhattan Detention Center had been inoperable since 1983. (DOC, Fire and Safety Unit, Fire and Safety Inspection of Manhattan Detention Center (North and South Towers), May 1992, at 3.)

*3 During this period, OCC also began to independently document serious fire safety hazards at several of the larger facilities on Rikers Island. In 1992, OCC reported that “[t]en of the modular units at the Adolescent Reception and Detention Center are not properly hooked into the Control Room” and that “none of the fire alarm pull stations work” at the Anna M. Kross Center. (OCC Progress Report # 29 at 22.) Later that year, OCC learned that the fire alarm system at the Anna M. Kross Center had been out of service for ten years and that there were similar serious problems with the alarm systems at the James A. Thomas Center.

As the scope and seriousness of DOC’s fire safety problems became better documented and understood through the combined efforts of OCC, the Fire and Safety Unit and a handful of consultants, OCC and the parties began to discuss strategies for addressing this issue. In 1990, Judge Lasker directed OCC to work with the parties

to develop “work plans” with specific tasks and schedules to achieve compliance with the Consent Decrees. In February 1992, DOC agreed to submit a Fire Safety Work Plan by June 1992. (OCC Progress Report # 30 at 17.) This obligation was formalized in an order, the Schedule for Achieving Total Compliance Order, entered by consent on February 8, 1993. (OCC Progress Report # 39 at 3.)

While hardly in keeping with their agreement, DOC did submit a draft fire safety work plan in October 1992. The draft work plan was a general outline of DOC’s commitment to develop and implement fire safety improvements within specified time frames. The actual work to be done in each facility appeared in DOC’s Fire Safety Master Plan (“FSMP”). In 1993, OCC’s fire safety expert, Mr. Thomas Jaeger, concluded that DOC’s master plan for the Anna M. Kross Center (“AMKC”) was substantially deficient, raising questions concerning the adequacy of the work plan as a whole and the appropriateness of the fire safety standards embraced by DOC.

Throughout 1994 and 1995, the parties and OCC (as well as the Fire Department and fire safety consultants) met several times and exchanged correspondence in an effort to reach agreement on the AMKC plan. By the end of 1995, the parties had resolved all disputes regarding fire safety at AMKC, except for the issue of smoke detection. (OCC Progress Report # 39 at 4.) Encouraged by the prospect of finalizing the AMKC plan, in November 1995 OCC proposed a plan for producing individual, court-ordered fire safety work plans for six jails in 1996. (OCC Progress Report # 39 at 3.) In December 1995, however, DOC indicated that it no longer accepted the concept of a court-ordered fire safety work plan and instead offered to submit to OCC and Legal Aid its updated FSMP. (OCC Progress Report # 39 at 3–4.) To date, the Department has failed to submit anything of the kind.

Tom Jaeger² has evaluated the DOC’s fire safety plans for the Anna M. Kross Center, the Brooklyn House of Detention for Men and the Manhattan Detention Center. In each case, Mr. Jaeger concludes that the proposed plan would not correct the majority of the fire safety deficiencies and, if fully implemented, would not provide a fire safe environment to the occupants of the facility. (Tom Jaeger, Fire Safety Master Plan, Anna M. Kross Center, Rikers Island, April 8, 1993, at 9; Tom Jaeger, Evaluation of Fire Safety, Brooklyn House of Detention for Men, May 5, 1995, at 9; Tom Jaeger, Evaluation of Fire Safety, Manhattan Detention Center, March 7, 1997, at 14.) Thus far, Mr. Jaeger has been the only outside consultant or organization to produce detailed evaluations of DOC’s plans. Mr. Jaeger’s reports have served as the focal point of discussions between the parties and have encouraged DOC to revise its plans. For example, DOC

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was considering substantial revisions to the AMKC plan based on Mr. Jaeger's recommendations when the City withdrew from negotiations in 1996. Similarly, DOC will commence a second fire safety project at the Brooklyn House of Detention for Men in 2001, which is expected to address some of the inadequacies of the ongoing project identified by Mr. Jaeger.

*4 While this history clearly illustrates that the parties have long considered fire safety to be a consent decree issue, it is also true that the Court has actively treated fire safety as part of the compliance process. On December 17, 1993 the Court signed an Order Regarding Fire Safety Improvements and Schedule for Closure of Wood Framed Modular Housing Units, which required that DOC implement fire safety enhancements (including the installation of new fire alarm and suppression systems) in a number of wood-framed modulars.³ On November 10, 1994, the Court granted Legal Aid's motion to compel production of reports prepared by DOC's fire safety consultants Rolf Jensen & Associates and Promatech, Inc. And, as mentioned above, the February 1993 Total Achievement order requires that DOC submit a fire safety work plan.

All this brings us to the present request by OCC. At a May 1996 meeting, DOC informed OCC that the scope of its FSMP had been reduced to accommodate cost constraints imposed by the City. DOC later provided OCC with a two-page synopsis of its revised fire safety plan, but indicated that a more detailed plan would not be circulated to OCC or Legal Aid. (OCC Progress Report # 41 at 9-10.) Another request in January 1997 that DOC submit its updated fire safety plans for all Rikers Island and borough facilities was refused. At a March 5, 1997 conference with the Court, OCC's request for a fire safety master plan was again discussed and the defendants made their view of the matter clear. Tr. at 27-30. The Corporation Counsel's office, who on behalf of the City represents DOCS and directs this litigation, stated that the two-page synopsis met DOC's obligations under the consent decrees. "I believe we produced an adequate plan to advise the plaintiffs of what we intended to do.... I don't think the court has any jurisdiction over us beyond what we were asked to do and we have done." Tr. at 30. I disagree and find the production of the fire safety master plan well within the defendants' obligations under the Consent Decrees. In order to enforce those decrees, and in light of defendants' refusal to comply with OCC's request for additional information, defendants are hereby ORDERED to provide OCC with its Fire Safety Master Plan, which Plan shall be substantially equivalent in detail to the Plan provided in 1992 and shall, at a minimum, address each of the issues outlined in the Appendix to this Opinion and Order.

III. Wood Modular Units

The wood modular units, which are used to house inmates at various of the Department's facilities, also have been the subject of ongoing discussion between OCC and the defendants. They were a major concern of the Court on its two most recent visits. The modular units have been the subject of at least two expert reports commissioned by OCC. (Report by Frederic Moyer, Feb. 1995; Report by Ward Duel, Feb. 1996.) Similarly, the modular units have been included in OCC progress reports, and defendants have responded to those portions of the reports. (OCC Progress Report # 41 and response thereto.)

*5 In the past, defendants were forthcoming with information regarding the wood modulars pursuant to their obligations under Court orders. Specifically, on September 21, 1995, in response to a request from OCC, the Department provided a chart identifying all the wood modular units on Rikers Island and noting the anticipated dates of improvements to each facility's modular units in certain areas of maintenance (e.g., roof, floor, shower, etc.). The tone has changed in recent months and an unfortunate pattern of non-cooperation has become evident, as with regard to the Fire Safety Plan discussed above. In September 1996, defendants refused to provide a timetable for the renovation of the modular units, alleging that the Plan was not finalized but would be ready by the end of the year. (Letter from Ralph McGrane, Assistant Chief, Inspectional Services and Compliances Division, to Paul Nicoll, Deputy Director OCC, Sept. 13, 1996.)

OCC recently renewed this request for updated information as to the status of the modular unit renovations. (Memorandum from Paul Nicoll, OCC, to Assistant Commissioner Vincent Cara, DOC, January 7, 1997.) This request was also discussed at the March 5, 1997 conference before the Court. Tr. at 30-31. The Assistant Corporation Counsel in charge of the case noted that "OCC will have a response from the Department. At this time, we will still confirm with the law department on the response we intend to submit to them." Tr. at 31. More than a month has passed and OCC has of yet received no response to its request. I find that the requested information is within the scope of the defendants' obligations under the Consent Decrees. In order to enforce those decrees, and in light of defendants' failure to voluntarily cooperate with OCC in its endeavor to fulfill its mandate, it is hereby ORDERED that defendants provide OCC with an update as to the status of the wood modular unit renovations in substantially the same form as the September 21, 1995 memorandum from Antonio Figuero to Paul Nicoll (attached as part of the Appendix to this Opinion).

IV. Conclusion

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The defendants are hereby Ordered to provide OCC with information regarding their Fire Safety Master Plan and the scheduled maintenance of the wood modulars on or before April 28, 1997.

SO ORDERED.

APPENDIX

I. Fire Safety Information: List of Information to be Requested

1. Will the facility fire alarm system(s) be replaced or repaired?
2. What functions will the repaired/replaced fire alarm system(s) perform?
3. Where will all fire alarm initiating devises (to include smoke detectors and manual pull stations) be located?
4. Where will all sprinklers (new and existing) be located?
5. What improvements will be made to the facility's fire water supply system?
6. Where will all fire rated partitions and enclosures (new and existing) be located?
7. Where will fire safing be provided?
8. What new or existing means of egress facilities will be provided and where is exit discharge for all means of egress?
- *6 9. Where will all smoke curtains and vents be located?
10. Where will all smoke partitions (new and existing) be located?
11. For new and existing smoke control systems, provide complete descriptions of each system, including but not limited to: design fire size; zoning; testing criteria; pressure differentials; and CFM and smoke control mode for exhaust and supply initiating devices.
12. Each facility plan should include a detailed description of existing building conditions and building schematic drawings.

**THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION
60 HUDSON STREET
NEW YORK, N.Y. 10013-4393**

MICHAEL P. JACOBSON
ACTING COMMISSIONER
ANTONIO FIGUEROA
DEPUTY COMMISSIONER
FOR CAPITAL DEVELOPMENT
AND SUPPORT SERVICES

MEMORANDUM

DATE: September 21, 1995
TO: Paul Nicoll, OCC
FROM: Antonio Figueroa
SUBJECT: Wood Frame Modular Repairs

I enclose a chart identifying all the wood modulars on Rikers with columns for noting the anticipated dates of improvements. As will be noted DOC has secured resources for all major building systems improvements except showers.

We have engaged a consultant to provide design and construction plans for several typical modulars. This design will be used to establish overall cost and schedule for replacing all modular showers and bathrooms and for requesting the necessary capital funds. The consultant's report is anticipated for the end of October.

- AF:
- C: M. Jacobson
 - C: B. Kerik
 - C: E. Marrero
 - C: R. Galletta

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Footnotes

- ¹ Defendants have appealed my January 7, 1997 Order. Obviously, should that Order be reversed, the parties would be obligated to comply with the Second Circuit's mandate.
- ² Mr. Jaeger is the president of Gage-Babcock & Associates, a fire safety consulting firm.
- ³ The fire safety improvements required by the order were completed by January 1995. However, in February and March 1996, OCC visited sixteen wood-framed modular units and found that the new fire safety systems in seven units were inoperable and, in some cases, had not worked for over a year. (OCC Progress Report # 40 at 16.)