

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

INDIAN INMATES OF THE	)	4:72CV156
NEBRASKA STATE PENITENTIARY,	)	
	)	
Plaintiffs,	)	
	)	JUDGMENT DENYING MOTION FOR
vs.	)	CONTEMPT OF ORDER-JUDGMENT
	)	DECREE, APPROVING SETTLEMENT
HAROLD W. CLARKE, Director of	)	AGREEMENT, TERMINATING
Corrections, et al.,	)	CONSENT DECREES AND DISMISSING
	)	ACTION
Defendants.	)	

This action is before the court on a Motion for Contempt of Order-Judgment Decree, filing 248, based upon a claim of the plaintiffs who are Indian inmates of the Nebraska State Penitentiary and members of a class on whose behalf a consent decree was filed and entered on October 31, 1974, and supplemented by filing 51 on May 24, 1976.

The claim now before me is that the prison administration has violated the 1974 Consent Decree in twelve different respects, which I set out in a Memorandum and Order on Plaintiff's Motion for Contempt Order and Defendants' Motion to Terminate Consent Decree, filing 263. Appointment of counsel was made and ultimately a Settlement Agreement was presented to me for approval. Two hearings have been held in regard to the proposed Settlement Agreement. Following the hearing of March 14, 2005, I announced the result and reasons for it at the conclusion of the evidence and approved the Settlement Agreement, received in evidence as Exhibit 100.

Timely notice to all class members who would be bound by a proposed settlement--the Native American inmates of the Nebraska Penal and Correctional Complex--was given. The Settlement Agreement is fair, reasonable, and adequate. No members have requested exclusion from the class. Objections were made at the hearing of March 14, 2005, by Ralph E. Thomas, Robert Greyowl, Michael Joseph Sims, Kevin L. White, and Richard T. Walker, but I conclude that in the context of this case the objections are not reasonable. There is no clear and convincing evidence that the administration willfully violated the Consent Decree of 1974. If the Settlement Agreement were rejected and trial held, the risks to all parties, including the class

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members and the administration, would be substantial. Both sides have made concessions in their negotiations and both stand to lose benefits they have gained by their negotiations. It is noted also that some of the objections are outside the scope of the 1974 Consent Decree.

It is prudent, therefore, to approve the settlement agreement as being fair, reasonable, and adequate.

The Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626 *et seq.*, was signed into law on April 26, 1996. It specifically deals with prospective relief in actions regarding prison conditions. With respect to the 1974 Consent Decree, as supplemented on May 24, 1976, § 3626(b)(1) provides:

- (A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion for any party or intervenor—
  - (i) 2 years after the date the court granted or approved the prospective relief; . . .
  - . . .
  - (ii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

Thus, the 1974 decree, which granted prospective relief, is now terminable. Additionally, the Settlement Agreement contains the provision that “the parties agree that the Consent Decree filed October 31, 1974, and the Supplemental Consent Decree filed May 24, 1976, be terminated and that the present case be dismissed with prejudice.” Section 3626(b)(1)(B) specifically provides that “Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).”

With respect to the relief that might flow from the Settlement Agreement, § 3626 of the PLRA declares in subsection (a)(1):

- (A) . . . The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

Although the Settlement Agreement is narrowly drawn with respect to what the prison administration agrees to do, I have not and do not find that those provisions extend no further than necessary to correct some violation of the “inmates’ Federal right.” Accordingly, I do not see that I can issue “prospective relief,” which § 3626(g)(7) defines as “all relief other than compensatory monetary damages.” Nor can I enter a consent decree, which is defined in § 3626(g)(1) as “any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements,” because § 3626(c)(1) forbids the entry of a consent decree “unless it complies with the limitations on relief set forth in subsection (a)”--that is, unless such relief “is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.”

On the other hand, § 3626(c)(2) gives regard to private settlement agreements, by saying:

- (A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.
- (B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

It seems to me, then, that the Settlement Agreement is a “private settlement agreement” that need not comply with the limitations on relief of § 3626(a), and such a private settlement agreement is appropriate as long as its terms are not subject to court enforcement “other than the reinstatement of the civil proceeding that the agreement settled.” Hence, it appears that if the Settlement Agreement is not complied with, theoretically the action being dismissed in accordance with the Settlement Agreement can be reinstated by this court. It might be only a theoretical restoration, however, because the 1974 consent decree, supplemented by the 1976 decree, may be of no vitality, even if action based upon it or them were reinstated. State court enforcement of the Settlement Agreement, however, is clearly preserved under § 3626(c)(2)(B) and § 3626(d).

IT IS ORDERED that:

1. the Settlement Agreement, plaintiff's Exhibit 100, shall be filed and it is approved;
2. the Motion for Contempt of Order-Judgment Decree, filing 248, is denied;
3. the Motion to Terminate Consent Decree, filing 256, is granted; the Order-Judgment and Decree, filing 48, supplemented by the Supplemental Consent Decree, filing 51, is terminated;
4. this action, CV72-L-156, is dismissed with prejudice and any right to attorneys' fees or costs has been waived.

Dated March 15, 2005.

BY THE COURT

s/ Warren K. Urbom  
United States Senior District Judge