

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KIRK HUGHES, DENNIS CHRYSLER,
STEVE JOCKO, WENDELL GLOSKEY,
CHARLES WEBSTER and SCOTT MT. PLEASANT,
on behalf of themselves and all others similarly situated,

Plaintiffs,

No. 97-CV-6431 CJS

-vs-

DECISION AND ORDER

GLEN GOORD, Commissioner of the New York State
Department of Correctional Services, RAYMOND
BROADUS, Assistant Commissioner of the New York
State Department of Correctional Services, JIMMIE
HARRIS, Director of Ministerial Services, JOSEPH
MCCOY, Superintendent of Cayuga Correctional
Facility, SALLY JOHNSON, Superintendent of Orleans
Correctional Facility, MELVIN HOLLINS, Superintendent
of Oneida Correctional Facility, WALTER KELLY,
Superintendent of Attica Correctional Facility, and
DAVID L. MILLER, Superintendent of the Eastern
Correctional Facility,

Defendants.

FILED COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
SEP 10 1997
10:09 AM
CLERK OF COURT
SERVING TO WESTERN NEW YORK
1800-2700

BACKGROUND

Plaintiffs in this action are Native American prison inmates, who alleged that in most of New York State's prisons, the New York State Department of Correctional Services ("DOCS") was unlawfully preventing them from conducting religious ceremonies. The complaint states that it is a class action "brought pursuant to 42 U.S.C. § 1983, and seeks injunctive relief to enjoin Defendants from violating Plaintiffs'

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right to the free exercise of religion and equal protection of the law as guaranteed by the First and Fourteenth Amendments to the United States Constitution." In general, plaintiffs sought the ability to engage in certain religious practices, including smudging and sweat lodge ceremonies, the hiring of Native American Chaplains, and the ability to wear and possess certain religious items.

Plaintiffs commenced this action on September 29, 1997, and shortly thereafter, counsel for the parties began negotiating a settlement. In a Joint Status Report [#11] filed on October 22, 1998, the parties stated as follows:

The parties have conducted settlement negotiations since December 1997. The seventh settlement conference occurred on July 7, 1998. ... The conferences were conducted primarily by Sarah Betsy Fuller, Attorney for Plaintiff, Prisoners' Legal Services[,] and Anthony J. Annucci, Deputy Commissioner and Counsel for the Department of Correctional Services. As a result of the settlement conferences, DOCS has adopted an interim policy which subject to security and safety concerns, permits Native American inmates at all facilities to possess symbolic and sacred items essential to their beliefs including participation in seasonal ceremonies, regular meetings for prayer or study, smudging, drumming, chanting and dancing in congregation, and with individual observance. ... Also as a result of the settlement conferences DOCS has agreed to create a half-time chaplaincy position to serve Native American inmates and has begun recruiting to fill the position. There are a number of issues yet to be resolved. Among these is the plaintiffs' alleged right to participate in Sweat Lodge ceremonies.

Thereafter, the parties continued settlement negotiations.

On March 24, 1999, counsel for the parties appeared before the undersigned for a status conference. At that time, counsel informed the Court that they had "reached agreement in principle," but that there were still certain unresolved matters, such as the issue of whether or not inmates would be permitted to engage in Sweat Lodge ceremonies. (Transcript of Status Conference [#14], p. 3-25). Defendants' counsel

stated that with regard to sweat lodge ceremonies, "[a]t this point our view point is that allowing a number of inmates to be unsupervised in a closed [sweat lodge] for a period of two or three hours, which is the period of time we are talking about ... [p]resents a security concern that we have not been able to reconcile." (*Id.*, p. 17). The Court then adjourned the matter for six weeks to allow the parties to complete their negotiations. On May 12, 1999, counsel again appeared before the undersigned, at which time counsel agreed to conduct two more days of settlement negotiations in June of 1999, and to appear again before the undersigned on July 9, 1999.

On July 9, 1999, counsel appeared before the Court for a full day of settlement negotiations, after which they signed a 21-page stipulation of settlement. ([#30]). The stipulation provides for a compromise of plaintiffs' demand for sweat lodges, whereby DOCS is not obligated to provide or allow sweat lodge ceremonies, but inmates may apply for a family-tie furlough for the purpose of participating in sweat lodge ceremonies outside of the facility. With the exception of sweat lodges in the prisons, the settlement agreement appears to provide plaintiffs with most, if not all, of the relief which they were seeking in this action. In addition, the agreement provides mechanisms for monitoring, training of DOCS employees, dispute resolution, and payment of attorney's fees to plaintiffs' counsel. Finally, the agreement provided that the parties would move the Court to certify this as a class action, and that if the class were certified, the parties would jointly move for an order dismissing the action pursuant to Rules 23(e) and 41(a)(2) of the Federal Rules of Civil Procedure.

On September 1, 1999, the parties filed a stipulated motion [#18] to certify this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2). On September 20,

1999, the Court issued an Order [#21] certifying this matter as a class action, and a stipulated Order [#22] regarding notice to the class. Plaintiffs, i.e., all Native American inmates in New York State's prisons, were sent a copy of the proposed settlement agreement and a detailed notice explaining the terms of the proposed settlement. The Order directing notice established a 30-day period for plaintiffs to submit comments or objections to the proposed settlement. Following the comment period, plaintiffs' counsel were directed to submit a report summarizing any comments or objections raised by plaintiffs, and defendants' counsel were directed to submit a response to the report. On December 15, 1999, plaintiffs' counsel filed their "Report of Comments" [#25]. The comments received from class members centered mainly upon a few issues. First, some inmates expressed doubt that DOCS would honor its commitment to hire a Native American chaplain. Second, some inmates felt that the proposed settlement favored members of the "Six Nations (Haudenosaunee)," while not providing for other Native Americans. Third, inmates were concerned that they would not be able to burn "Indian tobacco" if tobacco were banned by DOCS. Finally, some inmates felt that the proposed settlement was discriminatory, since it would have required Native American inmates to prove that they were in fact Native American, while there allegedly is no such requirement for members of other religions. As a result of the comments received, plaintiffs' counsel stated that "with reluctance," they were recommending that the Court not approve the Stipulation. ([#25], p. 1).

On January 14, 2000, defendants filed their response to plaintiffs' report. Defendants noted that many of the inmates' concerns and fears were either unfounded or were moot. For example, defendants noted that a Native American Chaplain had in

fact been hired by DOCS, and that despite DOCS' no-smoking policy, Native American inmates were permitted to smoke or smudge non-tobacco substances twice a day, and were permitted to smoke Indian tobacco during eight religious ceremonies during the year.

Thereafter, counsel for plaintiffs and defendants engaged in additional negotiations in an attempt to address the concerns raised in Plaintiffs' Report. On February 17, 2000, counsel submitted a Joint Supplemental Response [#29], jointly recommending approval of the July 9, 1999 settlement agreement. The Joint Supplemental Response noted that the inmate's most serious concerns had been addressed by the hiring of a Native American chaplain. Counsel also stipulated to two minor technical changes to the stipulation. Specifically, counsel stipulated to amend Section IV(G)(6)(b) of the Stipulation to delete an erroneous reference to "sweet grass," and to amend Section IV(G)(5) to delete an erroneous reference to tobacco.

ANALYSIS

It is well settled that "Federal Rule of Civil Procedure 23(e) requires court approval of any settlement that effects the dismissal of a class action. Before such a settlement may be approved, the district court must determine that a class action settlement is fair, adequate, and reasonable, and not a product of collusion." *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000). Moreover, "[a] proffered settlement that is in large part negotiated prior to certification of the class--as occurred herein--is subject to a higher degree of scrutiny than is usual in assessing a settlement's fairness." *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1323 (2d Cir. 1990). In conducting this inquiry, courts generally consider the following factors:

(1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Id. at 1323-24.

Applying the applicable foregoing law to the facts of this case, the Court finds that this action should be settled on the terms set forth in the stipulation of settlement [#30]. The Court finds that the Stipulation of Dismissal was painstakingly negotiated by experienced and able counsel in good faith, and strikes a fair and reasonable balance between the plaintiffs' demands and the defendants' concerns over security at New York's prisons. As noted above, with the exception of sweat lodges in the prisons, the stipulation essentially provides plaintiffs with the relief they sought in their complaint. In light of this, the Court finds that there would be little point in proceeding with this litigation. It is unlikely that the time and expense which would be consumed in discovery and trial would result in any significant gains for the plaintiffs. Moreover, with regard to the issue of sweat lodges, the stipulation provides that Native American inmates who are otherwise eligible for temporary release will have the opportunity to apply for a "family-tie furlough for the primary purpose of allowing the inmate to participate in a sweat lodge ceremony during his or her absence from the facility." (Stipulation [#30], Sec. III(G)). The Court further finds that plaintiffs have been given sufficient notice of the proposed settlement, and that the objections and concerns raised by the class members have, to the extent possible, been adequately addressed.


CONCLUSION

Accordingly, the Court approves the settlement of this action, pursuant to Fed. R. Civ. P. 23(e). It is hereby ordered that this action is dismissed as settled, upon the terms set forth in the stipulation of dismissal [#30], which is incorporated and made a part of this Decision and Order. Further, Section IV(G)(6)(b) of the Stipulation [#30] is amended to delete the reference to "sweet grass," and Section IV(G)(5) is amended to delete the reference to tobacco.

So ordered.

Dated: Rochester, New York
September 5, 2000

ENTER:


CHARLES J. SIRAGUSA
United States District Judge