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Enforcement Denied by Peterkin v. Jeffes, E.D.Pa., July 19, 1991
1989 WL 140489

Only the Westlaw citation is currently available.
United States District Court, E.D. Pennsylvania.

Otis PETERKIN, et al.

v.

Glen JEFFES, et al.

CIV. A. No. 83-0304. | Nov. 14, 1989.

Attorneys and Law Firms

Donald S. Bronstein, Nicholas N. Price, James D. Crawford, Stefan Presser, American Civil Liberties Union, Philadelphia, Pa., for plaintiffs.

John O.J. Shellenberger, Philadelphia, Pa., for Ronald Marks.

Opinion

MEMORANDUM

McGLYNN, District Judge.

*1 Before the court is a motion to approve a class action settlement. The class consists of all Pennsylvania prisoners awaiting execution of a death sentence. I am satisfied that the settlement is both fair and in the best interests of those individuals on whose behalf this action was maintained.

This suit arose out of the implementation by the Pennsylvania Department of Corrections in 1984 of a policy shift requiring the removal of death-sentenced inmates from the general prison population and confining them to the Restrictive Housing Units of their respective institutions at Graterford, Huntingdon and Pittsburgh. Among the consequences of this policy change was a loss of direct access to the Department’s law libraries. Access to legal material was available to members of the class through a “paging” system which required the inmate to request a specific book or identify a particular subject matter. The inmates contend this system severely inhibits their ability to research the relevant precedents. This court was of the view that since all but one of the class members was provided counsel at state expense, they were not denied “the fundamental constitutional right of access to the courts.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977). See *Peterkin v. Jeffes*, 661 F.Supp. 895, 928 (E.D. PA 1987).

The Court of Appeals remanded the case for further factual findings and analysis with respect to whether the death row inmates have counsel for all relevant proceedings including petitions for a writ of habeas corpus, post conviction relief petitions and civil rights actions. *Peterkin, et al. v. Jeffes, et al.*, 855 F.2d 1021 (3d Cir.1988).

Following the remand, the parties entered into negotiations and reached a Settlement which they now ask the court to approve.

The Settlement provides for the creation of a mini-law library in each Restricted Housing Unit where death-sentenced individuals are housed. Each of these will contain the same series of volumes providing class members with an overview of their rights with regard to both post-conviction and civil right proceedings. These treatises, many of which are loose-leaf volumes requiring by the terms of the Settlement regular updating, now place the most up-to-date precedent at the fingertips of death-sentenced inmates. With these in hand, class members may then order full copies of the decisions from the main libraries. Finally, as the settlement provides for two class members to work together, it ensures that those without familiarity with the legal system will receive assistance from those with greater expertise.

Under the terms of the Settlement, class members will not be provided with the individual volumes making up the court reporting system. Several class members object to the Settlement for that reason. It is class counsel’s view, however, that the benefits of the new system so outweigh that which members of the class could reasonably expect from further litigation as to warrant approval of the court.

*2 The mini-law library adequately meets the Supreme Court’s “main concern” in *Bounds*, 430 U.S. at 828, n. 17, by “ ‘protecting the ability of an inmate to prepare a petition or complaint.’ ” *Wolf v. McDonnell*, 418 U.S. at 576.” It does this by allowing class members to undertake meaningful legal research and eliminates the inherent limitations of the paging system previously in place. In contrast to the paging system, the settlement will provide class members with an opportunity to browse “through various materials in search of inspiration.” *William v. Leeke*, 584 F.2d 1336, 1339 (4th Cir.1978), cert. denied 442 U.S. 911 (1979). The mini-law libraries make research possible for both knowledgeable and unskilled class members.

Whatever minimal delay is caused by the fact that case reports must still be brought from another library¹, is outweighed by the fact that class members need not wait until they are without counsel to have access to legal

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materials. By agreeing to this Settlement, which is already being implemented, the Department permits each and every member of the class, regardless of the fact that such inmate may be presently represented by counsel, daily access to the mini-law library. It was in order to obtain immediate and daily access to the volumes listed in the accompanying appendix that the class representatives authorized counsel to enter into the Settlement.

Courts judge the fairness of a proposed compromise by weighing the plaintiff's *likelihood of success on the merits* against the amount and form of the relief offered in the settlement. *See Protective Commission for Independent Stockholders v. Anderson*, 390 U.S. 414, 424-425 ... they do not decide the merits of the case will resolve on settled legal questions.

Carson v. American Brands, Inc., 450 U.S. 79, 88 n. 14 (1981) (emphasis added). Since it is highly unlikely that even after trial the class would have obtained the relief embodied in the Settlement, this Court finds that it is fair,

Footnotes

¹ Based on the objections registered by class members Buehl and DeHart, the Settlement was revised to require the law librarian to bring class material at least twice a week to the Restricted Housing Unit. At present this material is brought three times a week to class members at Huntingdon. Given the large number of capitals housed at that facility, this practice will continue.

adequate and reasonable. In arriving at this conclusion, I have weighed in the balance the wholehearted recommendation of class counsel, an able advocate with extensive experience in the field of prisoner's rights.

The Settlement will be approved.

ORDER

AND NOW, this 14th day of NOVEMBER, 1989, upon consideration of the petition for approval of class settlement and after a hearing and upon consideration of the written objections made by certain members of the class, it is ORDERED that the class action settlement is APPROVED and the case is hereby DISMISSED in accordance with Local Rule 23(b).