

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**FILED**

**DEC 27 2004**

**CLERK'S OFFICE  
U. S. DISTRICT COURT  
EASTERN MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case number 03-72258  
Honorable Julian Abele Cook, Jr.

CITY OF DETROIT,

Defendant.

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ORDER

The issues in this case arose in December 2000 when the Plaintiff, United States of America, through its Department of Justice ("DOJ"), initiated an investigation of the various DPD policies and practices at the request of then-Mayor of Detroit, Dennis Archer. Following the completion of this investigation, the DOJ filed a lawsuit against the City, alleging a general pattern of unwarranted conduct by DPD officers who had subjected citizens to excessive force, false arrests, illegal detentions, and unconstitutional conditions of confinement. On the same day, the parties submitted two proposed consent judgments<sup>1</sup> to the Court in an effort to address all of the claims by the DOJ.

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<sup>1</sup>One consent judgment, which addressed the allegations relating to the DPD's use of illegal force, as well as its arrest and witness detention policies, will terminate within a period of five years if the City has (1) substantially complied with all of the provisions in this consent judgment and (2) maintained substantial and continuous compliance with its terms and conditions for at least two years. The other consent judgment, which is identified in this Order as "Consent Judgment I," focused upon the unconstitutional or otherwise unlawful conditions of confinement in DPD holding cells. The terms within the latter consent judgment provided, in part, that, "[f]or purposes of this lawsuit only and in order to settle this matter, the City and the DPD stipulate that they have violated the federal rights of inmates as alleged [in the DOJ's Complaint.]" Consent Judgment I at ¶ 100.

The parties also asked the Court to select an individual who, as an independent monitor, would, among other things, "review and report on the City and the DPD's implementation" of both consent judgments. Consent Judgment I at ¶124. The Court approved the two proposed consent judgments on July 18, 2003. Five days later, Sheryl Robinson, with the assistance of Kroll, Inc., was appointed by the Court to serve as the independent monitor in this matter.

A provision within Consent Judgment I indicates that the deadline for full compliance by the City "shall terminate two years after the effective date of the Agreement<sup>2</sup> if the DPD and the City have substantially complied with each of the provisions of the Agreement and have maintained substantial compliance for at least one year." *Id.* at ¶106. This provision also notes that "[t]he burden shall be on the City to demonstrate that it is in substantial compliance with each of the provisions of the Agreement and has maintained substantial compliance for at least one year." *Id.*

On July 19, 2004, the City filed a motion, seeking to extend the expiration date for this consent judgment for an additional two years. In its response, the DOJ, while not objecting to the City's requested extension of time, did urge the Court not to change or modify the internal deadlines within the parties' Agreement. The Court took the matter under advisement and directed the City to produce a schedule that would identify those paragraphs within Consent Judgment I which could be implemented within periods of six, twelve, and eighteen months. The City responded to the directive from the Court and, in addition, proffered its own assessment of the progress by the DPD in its implementation of the reforms which were required by Consent Judgment I. However, the DOJ filed another pleading, in which it criticized the City for having failed to specify those steps

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<sup>2</sup>For the purposes of this Order, "Agreement," as used by the parties, refers to the Consent Judgment I.

that would be undertaken to achieve full compliance with Consent Judgment I. The Court, believing that these critical comments had merit, directed the City to file a response which would address the DOJ's concerns. On October 29, 2004, the City augmented its original proposed timetable in response to this directive.

## II.

The Court, in approving the terms of Consent Judgment I, directed the independent monitor to assume the responsibility of conducting periodic compliance reviews on the progress of the City's implementation of the consent judgment. Consent Judgment I at ¶ 88. In addition, the independent monitor was also directed to submit public reports on a quarterly basis that would detail the City's compliance efforts. *Id.* at ¶ 97.

Since the entry of the consent judgments in July 2003, the independent monitor has submitted four reports, all of which indicate that the City has failed to achieve substantial compliance with the vast majority of the provisions within Consent Judgment I. As an example, the independent monitor, in her most recent report which covered a period through August 31, 2004, noted that the City had achieved substantial compliance with only three paragraphs of Consent Judgment I.<sup>3</sup> Furthermore, the independent monitor reports that since the entry of Consent Judgment I, the City has substantially complied with only four of the sixty-five paragraphs which require some remedial action by the DPD.<sup>4</sup> As measured by these reports, the compliance efforts

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<sup>3</sup>These paragraphs relate to (1) the formation of a no smoking policy, Consent Judgment I at ¶20, (2) repairs to cell blocks, *id.* at ¶43, and (3) the removal of Hepa-Aire Purifiers, *id.* at ¶46.

<sup>4</sup>In the April 15, 2004 report, the independent monitor concluded that the City was in compliance with Paragraph 39, which addressed the cleanliness of cells.

by the City are patently inadequate.<sup>5</sup>

In addition, the City has failed to meet specific deadlines that have been outlined in Consent Judgment I. For example, this Consent Judgment directed the DPD to develop and implement a fire safety program which was to have been submitted for review and approval to the DOJ within a period of three months from July 18, 2003. Consent Judgment I at ¶ 16. The independent monitor, whose last assessment of the DPD's compliance with this paragraph was submitted in her report during the quarter which ended on February 29, 2004, concluded that the City had not satisfied its obligation. *See* Monitor's Report for quarter ending Feb. 29, 2004 at 62. Similarly, the City has been found to be in noncompliance with paragraph 24 of Consent Judgment I, which directs the DPD to (1) develop and implement emergency preparedness procedures and (2) submit them to the DOJ for review within three months of the effective date of this Consent Judgment. *See* Monitor's Report for Quarter Ending May 31, 2004 at 67.

The City's references to its financial difficulties do not excuse its lack of compliance with the Consent Judgment I. In support of its motion, the City proclaimed that "due to [its] limited financial resources," it has been unable to implement "certain monetary measures required under the [Consent Judgment I.]" City's Mot. at 2. Despite an inquiry by the Court on this issue during the hearing on August 25<sup>th</sup>, the City has failed to provide a satisfactory explanation that its present financial condition constitutes a viable excuse for its failure to comply with Consent Judgment I.

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<sup>5</sup>In its motion and supporting papers, the City has raised some concerns as to differing interpretations of compliance between the independent monitor and the City with Consent Judgment I. However, in the absence of any formal challenge by either party to the opinions and conclusions of the independent monitor, the Court will rely upon her assessments and evaluations of the City's progress. As of this date, no formal challenges have been presented to the Court by either party.

The reasons that have been advanced by the City to implement the terms and conditions of Consent Judgment I are not justified. The City was presumptively aware of these financial obstacles in July 2003 when it joined with the DOJ in submitting the two proposed consent judgments to the Court. The commitments, which have now become a part of Consent Judgment I, were freely negotiated and agreed upon by the parties. Nevertheless, the City now acknowledges that it cannot uphold its promises of compliance.

Given the City's abject failure to comply with Consent Judgment I, the Court must now determine whether (1) an additional period of time is warranted under the circumstances which would allow the City to meet its legal obligations, or (2) some further remedial action is required to direct the City to fulfill its legal obligations.

### III.

Based on its review of the record, the Court, with great reluctance, concludes that an extension of Consent Judgment I is (1) an acceptable remedy under the circumstances and (2) in the interests of justice. The Court, in granting this motion, recognizes that the City has proffered a detailed plan and schedule for achieving compliance with Consent Judgment I. On October 7, 2004, the Court directed the City to (1) present a specific and detailed plan for achieving compliance with each paragraph of the Consent Judgment I, and (2) adequately explain why certain paragraphs would or should require different deadlines for compliance. In response to this directive, the City provided the Court with an estimated completion date for each task, as well as a detailed description of the actions taken by the City to achieve compliance. *See City's Reply*, Ex. A. This proffered schedule offers a blueprint of the City's proposed plan of compliance with Consent Judgment I. This Court is minimally satisfied that this proposal represents a well-intentioned commitment by

the City to implement the required reforms in a more expeditious matter.

In addition, the City has resolved that it has committed all of its resources to the development of a comprehensive plan which will result in full and total compliance with the terms and conditions with the two consent judgments. Specifically, the City has committed to a formal plan of action for the physical overhaul of its holding cells. Some of the paragraphs within the Consent Judgment I that address this requirement, include, *inter alia*, (1) full compliance with the Life Safety Code, Consent Judgment I at ¶ 14-15, (2) the installation of fire-prevention systems, *id.* at ¶ 16, (3) the removal of suicide hazards, *id.* at ¶ 34; and (4) the installation and operation of video cameras in all prisoner processing areas of the holding cells, *id.* at ¶ 64.

In response to criticism by the DOJ and the October 7, 2004 directive, the City has now represented to the Court that it is committed to the construction of a new detention facility. The City has also provided a timetable in which it has estimated that this new detention facility will be completed on or before April 2007.

In granting this extension, the Court notes that the vast majority of the provisions within the Consent Judgment I do not require the expenditure of substantial sums of money. Therefore, by granting the requested two year extension, the Court will neither condone nor permit the City to delay its obligations to fully satisfy the other reforms in Consent Judgment I.

The Court notes that the City has recently secured a possible funding source as the result of the approval of Proposal S by the voters at the November 2nd election. *See* attached Election Results from Detroit City Clerk. This proposal establishes bonds in an amount of \$78,000,000 to be used by DPD for their implementation of the consent judgments. The approval of the Proposal S underscores the importance of reforming the current practices and policies of the DPD, and

represents the level of desire by the citizens for a safe and sound community. Having articulated a detailed plan and schedule for compliance to the satisfaction of the Court, the City must now demonstrate that it has the commitment and the willingness to meet its obligations without any further delays or extensions of time.

In granting this motion for additional time in which to implement its reform initiatives, the Court will remind the City once again that any extension of time in which to complete its commitments under the two consent judgments will increase its costs and, in turn, will add an even greater burden upon the fiscal concerns of this community. Given the City's depleted financial resources, it is in the best interests of this municipality to achieve substantial compliance with the consent judgment as soon as possible.<sup>6</sup>

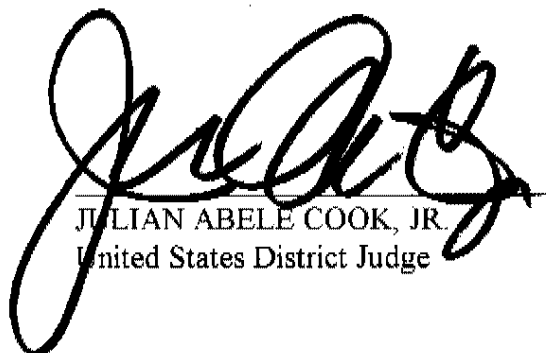
In summary, the Court grants the City's motion to extend the duration of the Consent Judgment I for two years until an effective deadline date of July 18, 2007. However, in granting this motion, the Court has not, and will not, relieve the City of any other deadlines that are presently reflected in the Consent Judgment I.

IT IS SO ORDERED.

DATED:

**DEC 27 2004**

Detroit, Michigan



JULIAN ABELE COOK, JR.  
United States District Judge

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<sup>6</sup>Under the terms of the consent judgments, the City is responsible for costs that are incurred by the independent monitor, Consent Judgment I at ¶ 84. On August 29, 2003, this Court entered an order which established a budget for the independent monitor and specifically provided, in part, that "[i]f the term of either consent judgment is extended, it will require modification of the [independent monitor's] budget."

**OFFICIAL CANVASS OF VOTES CAST AT THE GENERAL ELECTION HELD IN THE CITY OF DETROIT ON TUESDAY, NOVEMBER 2, 2004**

STATE OF MICHIGAN )  
COUNTY OF WAYNE ) SS  
CITY OF DETROIT )

I, JACKIE L. CURRIE, City Clerk of the City of Detroit in said county and state, do hereby certify that the proposals listed below received the number of votes indicated at the General Election held in the City of Detroit on Tuesday, November 2, 2004, as shown by the report of the Board of City Canvassers now on file and of record in my office.

**PROPOSAL E - FORM OF GOVERNANCE FOR THE DETROIT PUBLIC SCHOOLS**

NO - 195,771  
YES - 107,615

**PROPOSAL L - LIBRARY OPERATING MILLAGE RENEWAL PROPOSAL**

YES - 216,044  
NO - 68,742

**PROPOSAL M - LIBRARY OPERATING MILLAGE INCREASE PROPOSAL**

YES - 177,407  
NO - 105,860

**PROPOSAL N - CITY OF DETROIT NEIGHBORHOOD REDEVELOPMENT AND ECONOMIC DEVELOPMENT PROGRAMS BONDING PROPOSAL**

YES - 178,244  
NO - 102,096

**PROPOSAL P - CITY OF DETROIT PUBLIC LIGHTING SERVICE BONDING PROPOSAL**

YES - 177,780  
NO - 103,919

**PROPOSAL R - CITY OF DETROIT RECREATING ZOO AND CULTURAL FACILITIES BONDING PROPOSAL**

YES - 183,966  
NO - 96,399



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**OFFICIAL CANVASS OF VOTES CAST AT THE GENERAL ELECTION HELD IN THE CITY OF DETROIT ON TUESDAY, NOVEMBER 2, 2004**

**PROPOSAL S - CITY OF DETROIT PUBLIC SAFETY IMPROVEMENTS BONDING PROPOSAL**

YES - 186,788  
NO - 92,862

**PROPOSAL T - CITY OF DETROIT TRANSPORTATION FACILITIES BONDING PROPOSAL**

YES - 176,978  
NO - 105,011

**\*PROVISIONAL ENVELOPE BALLOTS**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the City of Detroit, Michigan, this 16<sup>th</sup> day of November, A. D., 2004.

*Jackie Cassin*  
City Clerk

