



CV 00-1672 #80

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JAN 08 2002

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY \_\_\_\_\_ DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT HICKEY, *et al*,

Plaintiffs,

v.

CITY OF SEATTLE, *et al*,

Defendants.

CASE NO C00-1672R

REPORT AND RECOMMENDATION  
RE: CLASS CERTIFICATION

I

Eight named plaintiffs are proceeding through counsel in this 42 U.S.C § 1983 action. They were all arrested by the Seattle Police Department or its agents in downtown Seattle on December 1-2, 1999, during protests directed at the World Trade Organization (WTO) ministerial conference. They allege that defendants instituted a series of unconstitutional "no protest" policies which created extensive curfews and a "no protest zone" surrounding the conference location, and that pursuant to these policies defendants unlawfully arrested them, along with several hundred other similarly situated persons, solely because they were expressing an opinion about the WTO. They seek declaratory relief, and compensatory and punitive damages. (Doc. 24 at 31)

*80*

1 This matter comes before the court on plaintiffs' motion for class certification pursuant to  
2 Federal Rule of Civil Procedure 23. (Doc. 25). Plaintiffs sought to represent a comprehensive  
3 class for both declaratory relief and money damages, pursuant to Federal Rule of Civil  
4 Procedure 23(b)(3). (See Doc. 51). Defendants opposed class certification on every ground  
5 (See Doc. 53). The court, having considered the motion and all papers filed in support and in  
6 opposition, recommends that plaintiffs' motion for Rule 23 class certification be denied

## 7 II

8 Several similar actions arising from the WTO protests have been filed in this district.<sup>1</sup> On  
9 July 10, 2001, the District Court consolidated all of the pending cases, including the instant  
10 case, for the limited purpose of resolving certain common legal questions regarding the  
11 constitutionality of defendants' actions in response to the protests. (*Menotti*, C00-372R, Doc  
12 39) On October 29, 2001, the District Court granted defendants' consolidated motion for  
13 summary judgment on the facial constitutionality of Emergency Order Number 3, ruling that it  
14 was content-neutral. (Doc. 55 at 9-10) The Court also granted defendants' motion for  
15 summary judgment on the failure to train or supervise claims, finding that plaintiffs failed to  
16 provide evidence of any inadequate training or supervisory policy. (*See id.* at 18-19) The  
17 Court denied plaintiffs' motion for summary judgment on the unconstitutional implementation  
18 of the Order with respect to the restricted zone, finding that establishment of the zone served a  
19 legitimate government purpose, was narrowly tailored, and provided ample alternatives for  
20 expression. (*Id.* at 10-17). Finally, the Court denied defendants' motion for summary judgment  
21 on the issue of probable cause for the arrests, concluding that such fact-intensive inquiry was  
22  
23

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24 <sup>1</sup> *Menotti, et al v City of Seattle, et al*, C00-372R; *Petrich v City of Seattle, et al*,  
25 C01-855R (removed to state court); *Moore v City of Seattle, et al*, C00-1156R; *Williams, et*  
26 *al v City of Seattle, et al*, C01-1998C; *Brynn, et al v City of Seattle*, C00-2123; *Crowley v*  
*City of Seattle, et al*, C01-336Z.

1 better suited for the trier of fact. (See Doc. 55 at 17-18). This ruling was clarified in an  
2 additional Order filed on December 7, 2001 (Doc. 77)

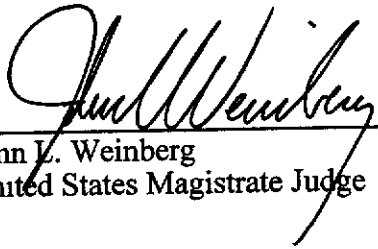
3 Subsequently, plaintiffs filed a supplemental brief acknowledging that the Court's  
4 summary judgment ruling rendered its previous motion for class certification obsolete, and  
5 suggesting that the court hold the motion in abeyance pending eventual appeal of Judge  
6 Rothstein's ruling. (Doc 78) Plaintiffs noted that the ruling "essentially resolve[s] the claims  
7 that plaintiffs seek to pursue on behalf of the currently-proposed class Plaintiffs disagree with  
8 the orders, but as long as they stand, there is no point going forward with plaintiffs' current  
9 class certification motion." (*Id.* at 2).

10 To maintain a class action, plaintiffs must meet all the prerequisites of Federal Rule of  
11 Civil Procedure 23(a), and satisfy the criteria in at least one of the categories in Rule 23(b)  
12 Plaintiffs bear the burden of showing that the requirements are satisfied. See *General Tel Co*  
13 *of Southwest v Falcon*, 457 U.S. 147, 156 (1982). In light of Judge Rothstein's ruling that  
14 defendants' emergency "no protest" policies were constitutional both facially and as  
15 implemented, plaintiffs cannot meet the commonality requirement of Rule 23(a)(2) As  
16 plaintiffs acknowledge, the only questions common to all proposed plaintiffs have now been  
17 resolved in favor of defendants. The Court's ruling also defeats the certification requirement of  
18 Rule 23(b)(3), which requires that "questions of law or fact common to the members of the  
19 class predominate over any questions affecting only individual members."

20 III

21 Because plaintiffs admit they cannot satisfy the criteria necessary for certification of the  
22 proposed class, I recommend that the court deny plaintiffs' motion for class certification. A  
23 proposed order accompanies this Report and Recommendation.

24 DATED this 8 day of January, 2002

25   
26 John V. Weinberg  
United States Magistrate Judge

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AT SEATTLE  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT HICKEY, *et al* ,  
Plaintiffs,

v.

CITY OF SEATTLE, *et al* ,  
Defendants.

CASE NO. C00-1672R

ORDER DENYING MOTION  
FOR CLASS CERTIFICATION

The Court, having reviewed plaintiffs' motion for class certification and all papers filed in support and in opposition to that, the Report and Recommendation of the Hon. John L. Weinberg, United States Magistrate Judge, and any objections or responses to that; and the remaining record, finds and ORDERS as follows:

- (1) The Court adopts the Report and Recommendation;
- (2) Plaintiffs' motion for class certification (Doc. 25) is DENIED; and
- (3) The Clerk shall send copies of this Order to all counsel of record, and to Judge Weinberg.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002

\_\_\_\_\_  
Barbara Jacobs Rothstein  
United States District Judge

ORDER DENYING MOTION FOR CLASS CERTIFICATION

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

January 8, 2002

CHAMBERS OF  
JOHN L. WEINBERG  
UNITED STATES MAGISTRATE JUDGE

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BY DEPUTY

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Re: Robert Hickey, et al. v. City of Seattle et al.  
C00-1672R

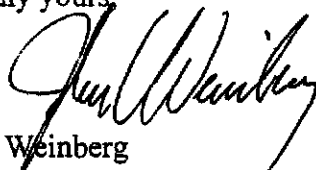
Dear Counsel:

Enclosed are copies of my Report and Recommendation and proposed order in the above-captioned case. The originals are being filed with the Clerk. This Report and Recommendation is not an appealable order. Any notice of appeal should not be filed until the District Judge enters judgment in this case.

Objections to the recommendation should be filed and served within fifteen days of the date of this letter with copies to the Clerk for forwarding to the District Judge and to my office. Failure to file objections within the specified time waives the right to appeal any order by the District Court adopting this report and recommendation. In accordance with our local rules, you should note your objections for consideration on the Judge's motion calendar for the third Friday after they are filed. If no timely objections are filed, the matter will be ready for consideration by the District Judge on January 25, 2002.

Thank you for your cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "John L. Weinberg". The signature is written in a cursive style with a large initial "J".

John L. Weinberg  
United States Magistrate Judge

JLW/jvl  
Enclosures

cc: Hon. Barbara Jacobs Rothstein  
/Court File C00-1672R