

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

75 Civ. 3073
(MEL)

- against -

ORDER RE: HIRING OF
COMPLIANCE AUDITING STAFF

ANTHONY J. SCHEMBRI, et al.,

Defendants

and related cases.

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In 1979 this Court and other courts entered consent decrees in the above entitled cases settling plaintiffs' claims that conditions of confinement for pre-trial detainees in the New York City jails were unconstitutional. By consent, these cases were then consolidated before this Court for enforcement purposes. In 1982, in response to a motion for contempt filed by the plaintiffs, and to help remedy allegations of widespread non-compliance with the consent decrees that were largely undisputed, the Court entered a further order creating the Office of Compliance Consultants (OCC), a neutral third party intended to assist the defendants in attaining compliance. Subsequent orders by consent have extended the tenure of OCC.

In response to continued failures of compliance, the Court in 1990 directed OCC, in cooperation with the parties, to commence the preparation of "work plans" identifying the tasks required to be done to bring the defendants into compliance with

the consent decrees and setting schedules for the accomplishment of each task. The work plans were to be adopted as orders of the Court. On June 10, 1992, the court signed a further Order re: Compliance with Work Plan Deadlines providing for a system of monetary sanctions for unexcused noncompliance with such deadlines.

On February 25, 1994, the court signed the Order re: Compliance Monitoring Work Plan, which adopts as an order of the court the Compliance Monitoring Work Plan ("Work Plan"). The Work Plan was negotiated by the parties with the assistance of the Office of Compliance Consultants. The Work Plan provides in general for the creation of an internal compliance auditing process within the Department of Correction to assess compliance with each requirement of the Consent Judgments. The Order re: Compliance Monitoring Work Plan states at 2-3: "The parties and OCC are in agreement that the development of an adequate internal monitoring and auditing process is essential to the achievement of substantial and lasting compliance with the requirements of the Consent Judgments."

The Work Plan provides for the commencement of the compliance audits on January 2, 1995. Work Plan at 13, Task 39. To that end, it requires that the City develop a staffing model for an Inspections Unit and that the parties reach agreement on staffing issues by June 28, 1994. Id., Tasks 33-35. These tasks were completed. The Work Plan also requires the City to ensure that necessary civilian staff were hired by December 12, 1994. Id., Task 38.

On December 5, 1994, the defendants requested from the court, via OCC, a delay of 29 weeks in the hiring of civilian staff and 28 weeks in the commencement of the compliance audits, as well as delays in other tasks closely related to them. They explained in their letter to OCC of December 5, 1994 that civilian staff hired at the present time would be lowest in seniority and that because of the City's current "severance program" and the possibility of layoffs of city employees in the future, the newly hired auditing staff might be immediately laid off or "redeployed" to other positions pursuant to civil service procedures and agreements with City employees.

OCC recommended that the defendants' request be denied. The plaintiffs applied for an order specifically directing compliance with the relevant Work Plan provisions and insulating the newly hired civilian auditing staff from layoffs or redeployment. The defendants renewed their request for a delay directly to the court in their letter of December 15, 1994.

The court has reviewed the parties' written submissions and has determined that the request for delay should be denied, in accordance with OCC's recommendation. Insofar as the request seeks modification of an existing order based on changed circumstances (severances and proposed layoffs), they are circumstances of the defendants' own making, which do not justify modification. In addition, the court has determined that an order should issue directing compliance with the relevant Work Plan provisions. Under the Supremacy Clause, U.S. Const., Art. VI, Cl. 2, the orders of this federal court take precedence over contrary

requirements of state or local law or private agreements made by the defendants. This determination was conveyed to the parties telephonically on December 19, 1994.

IT IS THEREFORE ORDERED that:

1. The defendants' request for a delay in Tasks 29, 37, 38, 39, and 58 of the Compliance Monitoring Work Plan is denied.

2. The defendants shall immediately fill the nine civilian auditing positions, identified in Assistant Chief Sullivan's letter to the Office of Compliance Consultants of December 5, 1994 as four Management Auditors, three Staff Analysts, and two Office Aides. The defendants shall take all other steps necessary to comply timely with the work plan tasks listed in the preceding paragraph.

3. The defendants shall commence their audit program as the Work Plan requires on January 2, 1995, except that the defendants may have one week's grace period for this task, if required. This period reflects the passage of time between the December 12, 1994 Work Plan hiring deadline and the court's telephonic denial of their application on December 19, 1994. The defendants shall, after commencement of the audit program, carry out that program as set forth in the Compliance Monitoring Work Plan.

4. The persons hired to fill the civilian auditing positions referred to in ¶ 2 shall not be laid off, redeployed or reassigned to other duties except upon further order of the court. This provision shall not be construed to prohibit discharge or other disciplinary action, in the usual course of

defendants' personnel procedures, based on misconduct or non-performance of duties. The defendants shall immediately notify OCC when any such action is contemplated and shall immediately take steps to fill any position thereby made vacant.

Dated: New York, New York

~~December 10~~, 1994
January

Monditz-Casper

U.S.D.J.