

Food - 93/163  
Order - 93/24

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

75 Civ. 3073  
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

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ERNESTO MALDONADO, et al.,

Plaintiffs,

76 Civ. 2854  
(MEL)

- against -

WILLIAM CIUROS, JR., et al.,

Defendants.

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ORDER RE: NONCOMPLIANCE  
WITH FOOD SERVICE WORK  
PLAN

DETAINEES OF THE BROOKLYN HOUSE OF  
DETENTION FOR MEN, et al.,

Plaintiffs,

79 Civ. 4913  
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

DETAINEES OF THE QUEENS HOUSE OF  
DETENTION FOR MEN, et al.,

Plaintiffs,

79 Civ. 4914  
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

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IOLA FORTS, et al.,

Plaintiffs,

76 Civ. 101  
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

GUY ZEPH AMBROSE, et al.,

Plaintiffs,

76 Civ. 190  
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

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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, 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.

In response to continued failures of compliance, the Court in 1991 commenced the adoption 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 Revised Food Service Work Plan was adopted as an order of the Court on July 10, 1992.

In response to several instances of noncompliance with work plan deadlines, the Court issued an additional order on July 10, 1992, entitled "Order re: Compliance with Work Plan Deadlines" (hereinafter Compliance Order). Among other provisions, this order mandates strict compliance with work plan deadlines. In the event either party believes it cannot comply with a deadline, the order at ¶2 mandates written notice ". . . as soon as the need for an extension becomes apparent. . . ." The order additionally provides at ¶5 for the imposition of sanctions in the event of unexcused noncompliance, to be assessed in the form of fines.

The City has now requested the extension of three deadlines in Attachment C of the Revised Food Service Work Plan, referred to by the parties as the kitchen rethermalization project. Two of the City's requests -- for an additional 93 days for the construction stage and an additional 25 days for the bid, award and registration of contract stage -- are uncontested by the parties. The Court hereby deems these delays excused and adopts these two deadline extensions.

The City's third request for an extension of one hundred and ten days in the design stage has been contested by the plaintiffs, and the Office of Compliance Consultants has recommended that the request be denied. After hearing from the parties, as stated in its oral decision on July 12, 1993, the Court concludes that the City failed to meet the mandate of the Compliance Order at ¶2, requiring notice to the parties "as soon as the need for an extension becomes apparent. . . ." In order to

insure the integrity of the compliance system, the Court hereby deems this period of delay unexcused and imposes a fine pursuant to the Compliance Order.

It is therefore ORDERED, ADJUDGED, AND DECREED:

1. The City shall be fined for the one hundred and ten day delay in the design stage of phase I of the kitchen rethermalization project in the amount of \$90,400, which sum shall be deposited into the registry of the Court, until further order of the Court.

2. Upon completion of the tasks set forth in the Revised Food Service Work Plan, and upon a showing that recoupment is appropriate under the circumstances, the City may apply for recoupment of the fine money.

3. In light of the delays, both excused and unexcused, referred to in this order, Attachment C of the Revised Food Service Work Plan adopted July 10, 1992 shall be amended to provide for the following schedule of deadlines:

Phase I

November 16, 1993	Design stage completed
November 17, 1993	Bid/award/register contract commenced
March 11, 1994	Bid/award/register contract completed
March 14, 1994	Construction commenced
February 13, 1995	Start-up testing commenced
March 13, 1995	Construction completed
May 12, 1995	Start-up testing completed

Phase II

November 16, 1993	Design commenced
July 14, 1994	Design completed
July 15, 1994	Bid/award/registration commenced
November 7, 1994	Bid/award/registration completed
March 8, 1995	Construction commenced
February 5, 1996	Start-up testing commenced
March 6, 1996	Construction completed

May 6, 1996

Start-up testing completed

Phase III

July 14, 1994

Design commenced

March 13, 1995

Design completed

March 14, 1995

Bid/award/register contract commenced

July 7, 1995

Bid/award/register contract completed

March 6, 1996

Construction commenced

February 3, 1997

Start-up testing commenced

March 5, 1997

Construction completed

May 5, 1997

Start-up testing completed

4. This amended schedule is without prejudice to any future applications for modification based on circumstances not now before the Court.

Dated: New York, New York

*Any* ~~July~~ 17, 1993



U.S.D.J .