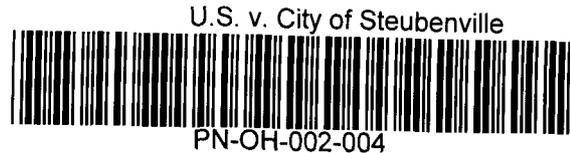


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
CITY OF STEUBENVILLE,)
STEUBENVILLE POLICE DEPARTMENT,)
STEUBENVILLE CITY MANAGER, in)
his capacity as Director of)
Public Safety, and STEUBENVILLE)
CIVIL SERVICE COMMISSION,)
)
Defendants.)
_____)



CIVIL NO. _____

**MEMORANDUM OF LAW IN SUPPORT OF
JOINT MOTION FOR ENTRY OF CONSENT DECREE**

SUMMARY

The parties have moved jointly for this Court to enter the proposed Consent Decree. Entry is appropriate under the law, and accordingly should be granted. A declaration in support of entry is attached to the Motion.

ARGUMENT

A consent decrees has "attributes of both a contract and of a judicial act." Williams v. Vukovich, 720 F.2d 909, 919 (6th Cir. 1983). "[O]nce approved, the prospective provisions of the consent decree operate as an injunction." Id. at 920. Because of the consent decree's status as a judicial order, the district court should review the decree's provisions prior to entry. That review, however, is deferential in circumstances such as these, where the plaintiff is the United States government, and where voluntary agreement serves the interests of the statute underlying the cause of action.

Under applicable precedent, the review should simply ensure that the consent decree:

spring[s] from and serve[s] to resolve a dispute within the court's subject-matter jurisdiction. Furthermore, consistent with this requirement, the consent decree must 'com[e] within the general scope of the case made by the pleadings,' Pacific R. Co. v. Ketchum, 101 U.S. 289, 297 (1880), and must further the objectives of the law upon which the complaint was based. . . . However, in addition to the law which forms the basis of the claim, the parties' consent animates the legal force of a consent decree. . . . Therefore, a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial.

Local 93, Int'l Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501 (1986). "[T]he trial court need only determine that the proposed settlement is not unconstitutional, unlawful, . . . or unreasonable before approval is granted. Moreover, . . . the decree proposed in these circumstances is entitled to a presumption of validity." United States v. City of Miami, 614 F.2d 1322, 1333(5th Cir. 1980).^{1/}

This decree meets these requirements because it fairly, adequately, and reasonably resolves the allegations in the Complaint; it furthers the purposes of Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141; its terms do not violate the law; and it serves the public interest.

The proposed Consent Decree was carefully drafted to help the Steubenville Police Department satisfy constitutional

¹ Rule 23, Fed. R. Civ. P., does not apply to this "action . . . brought by a Government agency to enforce the federal law with whose enforcement the agency is charged." General Telephone Co. of the Northwest, Inc. v. EEOC, 446 U.S. 318, 323 n.5 (1980).

requirements by implementing a comprehensive system that enhances accountability and supervision of officers and managers of the Steubenville Police Department, and meets current standards in the law enforcement profession. By agreeing to the terms of this Consent Decree, the United States and the defendants avoid expensive, protracted litigation, and accelerate reforms in the Steubenville Police Department.

The provisions of the decree are entirely within the scope of the statute underlying the Complaint, 42 U.S.C. § 14141. That statute imposes municipal liability for patterns or practices of illegal or unconstitutional conduct by law enforcement officers. As the relevant House Committee Report explains, its very purpose was to address systemically police misconduct resulting from inadequate supervision, training, internal investigations, and other practices: "Pattern or practice authority is needed . . . to address patterns or practices such as the lack of training . . . or the absence of a monitoring and disciplinary system." H.R. Rep. No. 102-242, at 138 (1991) (Omnibus Crime Control Act of 1991, Title XII, Police Accountability Act).^{2/}

The proposed Consent Decree requires systemic reforms to the Steubenville Police Department of precisely the type Congress

² This committee report accompanied the enacted statute's predecessor bill. There is no separate legislative history for the bill that was enacted and codified at 42 U.S.C. § 14141, but the legislative history of the predecessor bill is relevant because the language of that bill was identical, in pertinent part, to that of Section 14141. Compare id. at 24 ("It shall be unlawful for any governmental authority . . . to engage in a pattern or practice of conduct by law enforcement officers that deprives persons of rights, privileges, or immunities, secured or protected by the Constitution or laws of the United States.") with 42 U.S.C. § 14141 (same language).

intended when enacting Section 14141. The proposed Consent Decree requires reforms addressing: (1) training of police officers and supervisors (Consent Decree ¶¶ 12-20); (2) reporting and oversight of certain activities of police officers, including uses of force; stops, searches, and seizures, vehicular pursuits; certain types of arrests (Consent Decree ¶¶ 20-27); (3) internal affairs investigations and civilian complaints (Consent Decree ¶¶ 28-63); (4) management and supervision of police officers and supervisors, on the basis of specified sources of information, including the various activity reports required by the Decree, civilian complaints of misconduct, and civil and criminal findings by courts (Consent Decree ¶¶ 65-77); (5) discipline of officers on the basis of sustained findings of misconduct (Consent Decree ¶ 69); (6) performance evaluations of officers and supervisors (Consent Decree ¶¶ 78-79); (7) selection of the best available candidate for Chief of Police, when a vacancy occurs, by a comprehensive search process, rather than written examination of inside candidates only (Consent Decree ¶ 80).

These reforms are aimed at preventing incidents of police misconduct and thereby serve the public interest. During its investigation, the United States retained the services of a nationally recognized expert in police management, Professor James J. Fyfe. Professor Fyfe has reviewed the Complaint and the parties' proposed Consent Decree, using as his frame of reference the policies and practices of other police departments in jurisdictions the size of Steubenville. Professor Fyfe's declaration, attached, states that the requirements the proposed

Consent Decree would impose are simply good policing, as practiced throughout the United States.

Moreover, the reforms are tailored to the United States' Complaint alleging that from 1990 to the present, the Steubenville Police Department has engaged in, and continues to engage in, a pattern or practice of subjecting individuals to excessive force; false arrests, charges, and reports; and improper stops, searches, and seizures. Litigation to resolve these allegations could involve examination of many incidents of misconduct and connected management practices and would be complex, expensive, and time-consuming for the parties and the Court. The parties entered into this settlement after considering the risks and benefits of litigation and determining that the settlement as proposed in the Consent Decree was more attractive to both parties.

As the primary law enforcement agency of the United States, the United States Department of Justice has considerable expertise in law enforcement. Through this action the Department of Justice is acting to safeguard compliance with the Constitution, but with due regard for the needs of the subject law enforcement agency. The City, charged with the responsibility for providing law enforcement services to the people of Steubenville, has determined that the proposed Decree is entirely consistent with that responsibility. Nothing in the proposed Consent Decree in any way changes the authority of police officers under the Constitution and Ohio law to effect arrests, conduct searches or seizures, or otherwise fulfill their law enforcement obligations to the people of Steubenville.

In such circumstances, the ordinary rule that "[p]ublic policy strongly favors settlements of disputes without litigation," Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1372 (6th Cir.), cert. denied, 429 U.S. 862 (1976), is underscored:

Where a court is reviewing a consent decree to which the government is a party, the balancing of competing interests affected by a proposed consent decree 'must be left, in the first instance, to the discretion of the Attorney General.' United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Sam Fox Publishing Co. v. United States, 366 U.S. 683, 689 (1961) (the government has the discretion over accepting a consent decree unless there is bad faith or malfeasance); United States v. Associated Milk Producers, Inc., 534 F.2d 113, 117 (8th Cir.), cert. denied, 429 U.S. 940 (1976) (Attorney General must retain discretion in "controlling government litigation and in determining what is in the public interest").

Kelley v. Thomas Solvent Co., 717 F.Supp. 507, 515 (W.D. Mich. 1989). See also United States v. Miami, 614 F.2d at 1332.

Finally, the "clear policy in favor of encouraging settlements" has particular weight in areas such as this one, "where voluntary compliance by the parties . . . will contribute significantly toward ultimate achievement of statutory goals." Patterson v. Newspaper & Mail Deliverers' Union of New York, 514 F.2d 767, 771 (2d Cir. 1975), cert. denied, 427 U.S. 911 (1976) (quoted in Kelley v. Thomas Solvent Co., 717 F.Supp. at 516).

CONCLUSION

For the foregoing reasons, the Court should enter the proposed Consent Decree.

Respectfully submitted:

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