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United States District Court, E.D. Pennsylvania.

Randolph VAZQUEZ, et al., Plaintiffs,  
v.  
Timothy CARVER, et al., Defendants.

CIV. A. No. 86-3020. | Dec. 5, 1989.

#### Attorneys and Law Firms

Andre' L. Dennis, Lawrence C. Norford, Stradley, Ronon,  
Stevens & Young, Philadelphia, Pa., for plaintiff.

Henry S. Perkin, Asst. County Sol., County of Lehigh, for  
Timothy Carver.

Thomas M. Caffrey, Asst. County Solicitor, County of  
Lehigh, Allentown, Pa., for all defendants, excluding H.  
Barr, J. Waldman & G. Jeffes & Prison Health Services.

#### Opinion

### **MEMORANDUM AND ORDER**

HUYETT, District Judge.

\*1 Plaintiffs have filed a motion for a modified preliminary injunction. A hearing was held on November 27, 1989. The following represents my findings of fact and conclusions of law based upon the evidence produced at the hearing.<sup>1</sup>

1. I granted plaintiffs' renewed motion for a preliminary injunction on October 5, 1989. In so doing, I ordered the defendants to reduce the prison population at Lehigh County Prison (LCP) to no more than 310 inmates within forty-five (45) days of the date of my order. At the time of this order, the LCP population equalled approximately 420 inmates.

2. The forty-five (45) day time period provided by my October 5, 1989 order expired on Monday, November 20, 1989. It is undisputed that the defendants have failed to comply with my order requiring a reduction in the inmate population at LCP.

3. Conditions at LCP are substantially the same as existed on October 5, 1989.

4. Since October 5, 1989, the population at LCP has ranged between 429 and 382. During the week prior to the

November 27, 1989 hearing, the population was at or below 400.

5. While it is obvious that the defendants have not complied with my October 5, 1989 order, I find that defendants have expended considerable resources and energies in an effort to reduce the population at LCP. Also, through the efforts of the Judicial Corrections Liaison Committee on Population Management, the Lehigh County Court of Common Pleas has fully cooperated with the various agencies concerned in an attempt to reduce the prison population.

6. Construction of the interim prison facility in Salisbury Township has proceeded at a rapid pace. The facility is substantially complete, and should, according to present estimates, be ready for occupancy on December 5, 1989. Utilization of this facility will help alleviate the prison population at LCP, while the new prison facility is being constructed over the next two-and-a-half years. The interim facility should be fully operational before the end of this year, and it will house a total of 250 inmates. Lehigh County has taken the necessary steps to adopt a budget and hire the personnel necessary to operate the interim facility.

7. Despite the defendants failure to comply with my order of October 5, 1989, I decline to modify my preliminary injunction order in the precise manner suggested by plaintiffs. My decision to deny plaintiffs requested relief in part is based upon the efforts expended by the defendants to comply with my order. Instead, I will extend the deadline in which the defendants must comply with the population cap of 310 inmates to December 31, 1989.

8. I further note that if defendants fail to comply with the population cap of 310 inmates by December 31, 1989, I will consider the imposition of a substantial daily fine upon defendants. No further extensions of my October 5, 1989 order shall be granted.

9. In order to monitor the defendants progress in meeting this deadline, defendants shall be required to submit periodic reports to my chambers. These reports shall be submitted in accordance with the attached order.

\*2 Accordingly, plaintiffs' motion for a modified preliminary injunction is granted in part, and defendants shall have until December 31, 1989 to comply with my October 5, 1989 order. An appropriate order follows.

IT IS SO ORDERED.

**ORDER**

Upon consideration of the plaintiffs' motion for a modified preliminary injunction, the evidence adduced at the hearings on this matter, and at the hearings on plaintiffs' initial and renewed motion for a preliminary injunction, the arguments of counsel, the reasons stated on the record and for the reasons stated in the attached memorandum, plaintiffs' motion for a modified preliminary injunction is GRANTED IN PART.

It is ORDERED that this Court's order of October 5, 1989 granting a preliminary injunction in favor of plaintiffs is amended as follows:

1. The occupancy at Lehigh County Prison shall be limited to the 310 permanent beds presently available in the cell areas at the prison. Defendants shall reduce the inmate population at Lehigh County Prison to a level of 310 total inmates by December 31, 1989.
2. This preliminary injunction shall remain in full force

Footnotes

<sup>1</sup> I also incorporate by reference the findings of fact and conclusions of law contained in my memorandum and order of July 27, 1987 denying plaintiffs' initial request for a preliminary injunction and my memorandum and order of October 5, 1989 granting plaintiffs' renewed motion for a preliminary injunction. This memorandum will make only brief findings relating to the events occurring between October 5, 1989 and November 27, 1989.

and effect until the final hearing on the merits or approval by this Court of the Consent Decree executed by the parties, whichever comes first.

3. No bond shall be required to be posted by plaintiffs as security for this preliminary injunction.

4. Defendants shall be required to submit written reports to the Court on December 13, 1989, December 20, 1989, December 27, 1989 and January 3, 1990. Each report shall contain the following information: (a) the current main prison population; (b) the current interim prison population; and (c) any other information the defendants believe would be helpful to the Court in understanding the conditions which exist in both facilities. Copies of the written reports shall be supplied to counsel for the plaintiffs.

IT IS SO ORDERED.