UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsch, et al.,

Plaintiffs,

v.

Leonard W. Levine, et al.,

Defendants.

CIVIL 4-72-451

MEMORANDUM AND ORDER

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Luther A. Granquist, Legal Advocacy for Developmentally Disabled Persons in Minnesota, 222 Grain Exchange Building, 323 Fourth Avenue South, Minneapolis, MN 55415, for plaintiffs.

Hubert H. Humphrey, III, Attorney General, State of Minnesota, and Deborah L. Huskins, Special Assistant Attorney General, Second Floor Space Center Building, 444 Lafayette Road, St. Paul, MN 55101, for defendants.

Richard A. Cohen, Court Monitor, 106 Legal Education Center, 40 North Milton Street, St. Paul, MN 55104.

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This matter is before the Court on plaintiffs' motion to enforce the recommendation of the Welsch Consent Decree court monitor dated June 25, 1985. Plaintiffs' motion will be granted.

FACTS

This matter arises out of a disputed interpretation of the Welsch consent decree.[1] The decree, entered into by the parties and approved by Judge Larson September 15, 1980, requires that the Department of Human Services (DHS) employ three technical assistance specialists (TAS). The role of the TASes is to "assist in all phases of the development of community-based services for mentally retarded persons . . . including the provision of technical assistance to persons developing community-based services for mentally retarded persons." Consent Decree, ¶ 28.

Shortly after the decree's approval, the DHS filled the three TAS positions. The positions remained filled until November 2, 1984, when TAS Dr. Gordon Krantz retired. The DHS has not filled and does not intend to fill the TAS position vacated by Dr. Krantz. The DHS' purported justification for its failure to adhere to the letter of the consent decree is that the functions of the third TAS are more than adequately discharged by eight Regional Service Specialists (RSS) employed by the DHS since 1984. The eight RSSes, defendants contend, perform essentially the same job duties as would a third TAS, thus rendering a third TAS redundant.

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[1] The Welsch consent decree is the product of a 1972 class action brought by mentally retarded residents of Minnesota mental hospitals, all of whom had been judicially committed, seeking improvements in hospital conditions.

Following plaintiffs' inquiries concerning the vacant TAS position, the court monitor, Richard A. Cohen, issued a notice of initial determination of non-compliance, December 27, 1984. A formal conference and oral arguments were heard before the monitor in April, 1985. The monitor issued findings of fact and recommendations on June 25, 1985, in which he concluded that the DHS had not complied with the plain language of the consent decree and recommended that the DHS fill the vacant TAS position by July 5, 1985. The DHS now appeals from the recommendation of the monitor.

DISCUSSION

Judicial enforcement of the terms of a consent decree is essentially tantamount to judicial enforcement of a written contract. Welsch v. Noot, Memorandum Order (Jan. 13, 1982) (Larson, J.); United States v. ITT Continental Baking Co., 420 U.S. 223, 236 (1975). In construing a consent decree, the scope of the decree must be discerned within its four corners. United States v. Armour & Co., 402 U.S. 673, 681-82 (1971). The Court is required to construe the decree "as it is written," ITT, 420 U.S. at 236, citing United States v. Atlantic Refining Co., 360 U.S. 19 (1959); Hughes v. United States, 342 U.S. 353 (1952); United States v. Armour & Co., 402 U.S. 673 (1971), and not by reference to what might satisfy the purposes of one of the parties to it. Armour, 402 U.S. at 682.

The Welsch consent decree unequivocally mandates DHS employment of three TASes. Paragraph 28 of the decree provides that the Commissioner shall allocate three staff positions to be filled by TASes. Paragraph 29 provides that one of the TAS positions was to be filled by November 1, 1980 and the other two were to be filled by January 1, 1981. As plaintiff correctly points out, simple arithmetic leads to the inescapable conclusion that three TASes and not a lesser number are required by the decree. Further, in paragraph 30 of the decree reference is made to "the three technical assistance staff." Consent Decree, § 30.

Against this unequivocal language defendants argue that their current scheme, two TASes and eight RSSes, is the functional equivalent of three TASes, and that, accordingly, the third TAS slot need not be filled. While recognizing that they are in technical noncompliance with the consent decree, defendants maintain that the current ten-member staff meets and exceeds the decree's requirements.

The contentions of the DHS as to the purposes of the decree and alternative means of fulfilling those purposes are unavailing where the language of the decree is itself unambiguous. In the Armour and ITT cases the United States Supreme Court declared that the courts are not to look beyond the "four corners" of the applicable consent decree in the absence of some patent ambiguity. Armour, 402 U.S. at 682; ITT, 420 U.S. at 237-38. As recognized by the Armour Court,

because a consent decree represents a compromise agreement entered into after lengthy negotiation, and because by the terms of the decree the parties give up their due process right to litigate disputed issues, the instrument must be construed "as it is written, and not as it might have been written had [one of the parties] established his factual claims and legal theories in litigation." 402 U.S. at 682. Judge Larson in earlier litigation involving the Welsch consent decree stated:

> The foremost duty of the Court, however, is to enforce the provisions of the Consent Decree, which was negotiated and voluntarily entered into by the defendants, and which the defendants agreed to be legally bound by. The defendants must honor the obligation incurred by this decree to the same extent as obligations under any other legally binding document.

Welsch v. Noot, Memorandum Order at 10-11. See also, Robinson v. Vollert, 602 F.2d 87, 92 (5th Cir. 1979) (consent orders are interpreted as contracts and are to be construed only by reference to the four corners of the order itself; reference to extrinsic evidence is permissible only if order is ambiguous in some respect); United States v. Northern Colorado Water Conservancy District, 608 F.2d 422, 430 (10th Cir. 1979) (consent decree is to be construed for enforcement purposes basically as a contract); Hart Schaffner & Marx v. Alexander's Department Stores, Inc., 341 F.2d 101, 102 (2d Cir. 1965) (consent decrees are to be read within their four corners).

The Welsch consent decree mandates that three TASes be employed. This explicit language will be enforced as written. In the absence of some ambiguity in the terms of the decree, the Court will not look beyond the four corners of the instrument. Defendants' contention that their scheme is the functional equivalent of the terms of the decree is unavailing.

A finding for plaintiffs in this matter does not condemn the DHS to needless duplication of services. If in fact the scheme adopted by the DHS of two TASes and eight RSSes more efficaciously accomplishes the objectives of the Welsch consent decree then the appropriate course is for defendants to seek a modification of the decree. The decree sets forth detailed and explicit provisions for modification. As monitor Cohen correctly found, the advisability of the DHS' scheme may be explored more fully in a modification proceeding in which burdens and standards of proof are allocated and all relevant facts and factors can be examined. Monitor's Findings of Fact and Recommendations at 3. Formal modification is much preferable to the kind of unilateral modification which the defendants seek here.

Based on the foregoing, **IT IS ORDERED** that the Commissioner of Human Services:

(1) seek modification of the Welsch Consent Decree consistent with the procedures for modification set forth in the Welsch Decree, no later than ten working days from the date of this Order; or, in the alternative,

(2) commence hiring a person to fill the third technical assistance position required by paragraph 28 of the Consent Decree in this action approved by this Court on September 15, 1980, no later than ten working days from the date of this Order;

(3) follow the procedure in paragraph 31 of the Consent Decree in filling that position; and

(4) fill that position no later than 90 days from the date of this Order.

Judge Harry H. MacLaughlin
United States District Court

DATED: October 17, 1985