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United States District Court, S.D. New York.

James BENJAMIN, et al., Plaintiffs,
v.
Bernard KERIK, Commissioner of the New York City Department of Correction et al., Defendants.

No. 75 CIV. 3073(HB). | Nov. 13, 1998.

Opinion

Decision and Order

BAER, District J.

***1** Plaintiffs, a class of pretrial detainees, move for an order that requires the defendants to improve the fire safety conditions at the Brooklyn and Bronx Houses of Detention as well as the modular units on Rikers Island, to comply with Consent Decrees between the parties. A hearing was held and testimony taken on May 26 and May 27 as well as June 1 through June 3, 1998. For the reasons discussed below, certain relief is GRANTED.

I. Background

The original Consent Decrees at issue in this litigation were agreed to in 1978–79. They are designed to ensure the safety and humanity of prison conditions. Institutionally, the Consent Decrees, among other things, strive to maintain the physical plant of the jails in a condition safe for human habitation. On December 17, 1993 an order was issued that required fire safety improvements which included a functioning alarm system, operable smoke detectors or heat sensors, sprinkler systems not dependant on human intervention and electronic egress doors.

The Bronx House of Detention is a nine-story jail constructed primarily of concrete and steel that houses 400 beds on the second through sixth floors. The Brooklyn House of Detention is an eleven story structure that houses 800 inmates in two-tiered cell blocks with open barred fronts. The modular housing units on Rikers Island are generally one story wood-framed structures appended to the Adolescent Reception and Detention Center ("ARDC"), the Anna M. Kross Center ("AKC"), the George Motchan Detention Center ("GMDC") and the Rose M. Singer Center ("RMSC"). The modular units contain only dormitory style housing and are guarded by at least two correction officers 24 hours per day.

A. Plaintiffs' Fire Safety Concerns

1. ***Modular Units***
At the hearing plaintiffs presented evidence of several fire safety problems in the modular units. To begin with, the sprinkler systems were originally built as pre-action systems and they did not fill with water until after a signal from the smoke detectors. However, leaks in the modular unit roofs would short these detectors, and as a consequence the signal to the sprinkler systems became unreliable. Accordingly, the Department of Correction undertook to convert the pre-action systems to wet systems that simply needed a signal from the sprinklers' heat detectors to begin releasing water. Unfortunately, in several modular units wet systems were apparently not installed, and as a result, pre-action sprinkler systems prone to malfunction remained in place. (Tr. 88, 147–49)

The plaintiffs also presented evidence of malfunctioning fire alarms that were physically damaged or extremely dirty. (Tr. 339–40, 850) Further evidence was presented to show that staff members, including a jail fire safety officer at GMDC, could not reset an alarm when it went off accidentally or even explain the functions of various fire alarm panels. (Tr. 274–75, 334–35) The modular units presently have two means of egress. The rear egress doors have magnetic locks that release when an alarm is confirmed by a signal from the control room. At times, these magnetic locks have malfunctioned, a situation that caused the Department of Correction to padlock some doors from the outside. These padlocks, the plaintiffs contend, violate an order that requires the modular doors to be "openable at all times by an electronic lock." Ex. 8 at ¶ 3. Although the magnetic locks have been repaired, many of the doors remain padlocked from the outside, creating a potential fire hazard given the possible delay in opening the doors in case of an emergency.

***2** Roof leaks are largely responsible for the fire alarm and exit malfunctions. (Tr. 127–28) In 1997, the defendants began to replace the defective roofs by using a sprayed foam roofing system. While this system appears to have reduced the number of leaks and the resultant damage to fire safety equipment, the plaintiffs presented evidence from an architect, Elliot P. Rothman, who concluded that the new roofs were installed in a haphazard fashion and are likely to leak in the future. (Tr. 190, 209–10, 214–15) Lastly, there was a concern that the modular units are not compartmentalized and thus a fire

in one area could spread throughout the entire structure.

2. ***Bronx House of Detention***

Here, there were two major facility design problems highlighted by the plaintiffs. Presently, there is no fire compartmentalization, a problem the plaintiffs argue is significant since they contend there is no adequately secure area outside of the facility large enough to accommodate such an evacuation. A second concern relates to the sufficiency of egress. In the west wing dormitories on the second to sixth floors, there is only one means of egress—through a locked gate. Consequently, if a fire blocks that area the inmates on the west wing will be trapped. Another egress problem stems from the fact that the four stairways do not discharge directly outside. Rather, the stairways all lead to either the ground or first floors. As a result, a fire on either of these floors would make it extremely difficult to evacuate safely.

The plaintiffs also express concern with the smoke detection, alarm and sprinkler systems. In particular, the alarm system is old and prone to false signals. Automatic sprinklers are only provided on part of the ground floor and have not been regularly maintained. Smoke detectors are limited to the elevator lobbies.

3. ***Brooklyn House of Detention***

To begin with, a new alarm system installed in 1995 is not deployed. (Tr. 604) In addition, smoke detectors installed in the elevator lobbies, law library, telephone equipment room and housing area day room were not operational. (Tr. 606) Deputy Commissioner Antonio Figueroa attributed the delay, at least in part, to "paperwork." (Tr. 62) Even were these systems operational, the plaintiffs offered testimony to the effect that additional smoke detectors should be installed throughout the building to render the jail reasonably safe. The plaintiffs also presented expert testimony that suggested the need for additional sprinklers in any area where combustible material is or may be stored. These areas include the basement, first and second floors and third floor kitchen—where high combustible loading occurs. (Tr. 623)

Smoke and fire compartmentalization exists only between floors. Accordingly, any smoke or fire condition that arises in one area will likely spread across the entire floor without containment. The facility, according to the plaintiffs, also suffers from egress problems. Despite the existence of two stairways that lead out of the building, there is in essence only one means of egress. (Tr. 69) The two stairways are located in the central core, approximately thirty feet apart. Plaintiffs contend that given the relatively close proximity of one stairway to the other, a serious fire could possibly block both exits. Finally, there are problems with the locking mechanisms in the facility. Many of the 120 cells are locked manually and would have to be individually unlocked by hand if a fire were to break out.

4. ***Maintenance of Fire Safety Equipment***

***3** The plaintiffs correctly assert that the maintenance of fire safety equipment is essential to protect inmates in case of fire and further that by definition the equipment remains unused for significant periods of time. Nevertheless, the fact is that the equipment must nonetheless be operational when an emergency arises. According to the plaintiffs, the Fire Safety Officer's ("FSO's") weekly inspections often failed to identify serious problems, such as fire extinguishers that required recharging or improperly blocked exits. (Tr. 778–79, 781–83) More troubling, the plaintiffs contend, is the failure to correct identified deficiencies. For instance, in 1996 and again in 1997 the defendants promised to repair a gate that impaired egress at the Bronx House of Detention. (Tr. 499–500) The gate, however, was not corrected until 1998—shortly before the fire safety hearing occurred. (Tr. 501)

In a similar vein, there were standpipes in the Brooklyn House of Detention that could not be opened by hand, that the defendant has promised to remedy since 1995. Again, the standpipes were not replaced until immediately prior to the hearing. (Tr. 507–11, 528–29) Figueroa conceded that many fire safety violations remained uncorrected from year to year, and as a general matter he could not explain the failure to act. (Tr. 118) According to the testimony of Nicholas Mazzola, a FSO with the Department of Correction, many of the deficiencies that went uncorrected for lengthy periods of time were capital projects that required significant funds. (Tr. 460)

B. Department of Correction Response

In response to these fire safety concerns raised long before the hearing, the Department of Correction to its credit undertook a comprehensive improvement program.[1] In the modular housing units, most of the leaking roofs that caused damage to fire safety equipment in general, and electromagnetic locks in particular, were replaced.

At the Bronx House of Detention, additional compartmentalization is planned that includes upgrading doors to enable them to be fire-rated, restoration of the fire ratings of interior partitions and improving the fire safety between utility chases and housing floors. (Tr. 46–48) Also, the defendants are constructing an additional

means of egress that will serve the west dormitory areas, and the north stairs are being extended from the fifth to the sixth floor. (Tr. 49, 52) In addition, improvements include the installation of smoke detectors throughout the basement and ground floor, on the second through ninth floors with the exception of the cells, in the catwalks, dormitory areas, central core, day rooms at the end of the north and south wings, storage areas and in the air handling units. The defendants have removed combustible material previously stored in the seventh floor gym. Perhaps most importantly, the defendants are installing a centralized fire alarm system that features new panels and pull stations in the central core, day rooms in the north and south wings, housing floor dorms, first floor and basement.

***4** With respect to the Brooklyn House of Detention, two additional means of egress will be constructed on the north side of the facility, providing another mode of exit from cell areas in the east and west wings. (Tr. 72) This project is presently in the design phase. The defendants have installed new smoke detectors on the first and second floors. In addition, smoke detectors will be installed in the third floor kitchen and in the catwalks. Similarly, there are plans to install sprinklers in the central core and in program spaces on the housing floors. (Tr. 77) Areas that contained large volumes of combustible materials, such as records and debris, have been cleaned out and the mechanical, electrical and boiler rooms have been cleared. Finally, the defendants have installed an addressable supervised alarm system with pull stations, gongs, strobe lights and integrated smoke detectors.

II. Discussion

"Ensuring compliance with a prior order is an equitable goal which a court is empowered to pursue even absent a finding of contempt." *Berger v. Heckler,* 771 F.2d 1556, 1569 (2d Cir.1985) (district court appropriately amended decree given "its duty to protect the integrity of its judgments"); *see also Juan F. By and Through Lynch v. Weicker,* 37 F.3d 874, 878–79 (2d Cir.1994) (adjustment of consent decree to ensure compliance proper despite absence of contempt finding). Accordingly, I need not find that the defendants are in contempt to issue an order that enforces the Consent Decrees between the parties.

Plaintiffs, a class of pretrial detainees, seek an order that enforces Section S of the original Consent Decree that requires the maintenance of "safe" correctional facilities. The Due Process clause of the Fourteenth Amendment governs claims brought by pretrial detainees with respect to conditions of confinement. *See Bell v. Wolfish,* 441 U.S. 520, 535 n. 16, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). The absence of adequate and reliable fire protection can give rise to a Fourteenth Amendment Due Process claim. *See Harrison v. Ienuso,* 1995 WL 375915, at *2 (S.D.N.Y. Jun.23, 1995). Accordingly, a "safe" correctional facility for pretrial detainees must comport with the requisite standards of the Due Process clause of the Fourteenth Amendment. In *Harrison,* the court concluded that "fire safety conditions that are adequate, and do not subject detainees to a constant [and] imminent risk of death or injury impose no severe hardship on detainees and therefore do not offend the Constitution." *Id.* (citation and internal quotations omitted).

The plaintiffs, however, contend that the "constant and imminent risk" language articulated in *Harrison* must be interpreted consistently with the Supreme Court's decision in *Helling v. McKinney.* 509 U.S. 25, 32–34, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993). I agree. In *Helling,* the Supreme Court held that a prisoner stated a viable Eighth Amendment claim given the potential health problems that might arise as a result of exposure to cigarette smoke. *Id.* at 28–29, 37. The defendant there argued that only deliberate indifference to current and serious inmate health problems can give rise to an Eighth Amendment claim. *Id.* at 34. The Supreme Court rejected this argument, and concluded that an allegation that prison officials exposed an inmate to levels of environmental tobacco smoke that "pose an unreasonable risk of serious damage to his future health" is actionable under the Eighth Amendment. *Id.* at 34–35.

***5** The Due Process rights of pretrial detainees "are at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere v. Massachusetts General Hosp.,* 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983); *see also County of Sacramento v. Lewis,* 523U.S. 833, ——, 118 S.Ct. 1708, 1718, 140 L.Ed.2d 1043 (1998) ("Since it may suffice for Eighth Amendment liability that prison officials were deliberately indifferent to the medical needs of their prisoners ... it follows that such deliberately indifferent conduct must also be enough to satisfy the fault requirement for due process claims ...."); *Weyant v. Okst,* 101 F.3d 845, 856 (2d Cir.1996) (same). Given that the rights of pretrial detainees under the Due Process clause of the Fourteenth Amendment are at the very least co-extensive with those of convicted prisoners under the Eighth Amendment, I conclude—consistent with *Helling*—that fire safety protections must be afforded at a level that does not expose the plaintiffs to an unreasonable risk of serious damage to their future health. *See Helling,* 509 U.S. at 33 (constitutional protection "against future harm to inmates is not a novel proposition").

While the conditions in the modular units, Bronx House of Detention and Brooklyn House of Detention pose an unreasonable risk of serious damage to the future health

of pretrial detainees through fire, the improvements, both those implemented and scheduled, "have substantially reduced the extent to which judicial interference is warranted." *Coniglio v. Thomas,* 657 F.Supp. 409, 414 (S.D.N.Y.1987) (extensiveness of remedy curtailed by fire safety improvements made after the onset of litigation). While each of the proposed improvements should be timely made, it is particularly important that the defendants diligently act with respect to the conversion of all sprinklers in the modular units to wet systems, implementation of the centralized alarm system in the Bronx House of Detention and construction of the two additional means of egress in the Brooklyn House of Detention.[2]

Therefore it is directed that: (1) to ensure that these improvements—necessary to the operation of constitutionally adequate fire safe facilities—are completely implemented, the defendants are to adhere to the currently proposed schedules for completion. At the Bronx House of Detention the improvements undertaken pursuant to the C–138 project—which include a new supervised fire alarm system and an electronically operated gang release system—are "expected to be completed by the end of calender year 1999." Ex. 135 at pp. 1–2. The contract for construction of a second means of egress at the Brooklyn House of Detention will be registered with the New York City Comptroller prior to the end of June 1999 and "is expected to take two years and therefore be completed by June 2001." Ex. 135 at p. 3. Design changes at the Brooklyn House of Detention—which include improvements in the fire alarm, smoke detection and fire suppression systems, as well as enhanced egress, fire separation and smoke management—are "scheduled and budgeted for Fiscal Year ("FY") 1999, and construction is scheduled to commence in FY 2000 and to be completed in FY 2002." Ex. 135 at p. 3. At modular housing units six and seven at GMDC on Rikers Island, automatic dry or wet sprinkler systems will be installed, egress improved and better fire and smoke detection systems added. Ex. 135, Attachment A. These improvements were "expected to begin in July 1998 and to take approximately six months to complete." Ex. 135 at p. 5.

***6** It is further directed that: (2) the defendants are to appraise the plaintiffs and the Office of Compliance Consultants ("OCC") of all progress and any potential delays in the improvement projects. This is to be accomplished by the submission of quarterly status reports, in letter form, beginning on January 4, 1999.[3] *Cf. United States v. Oregon State Medical Soc.,* 343 U.S. 328, 333 (1952) ("It is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption.").

Further it is directed that: (3) the defendants submit to the Court, within sixty days of the date hereof, a proposed internal procedure for responding to Fire Safety Unit reports that will ensure that deficiencies are promptly identified and corrected. Since the occurrence of fires and especially fires of a life-threatening nature are infrequent, safety equipment such as extinguishers may often remain dormant for extended periods of time. In an emergency, however, the equipment must be in working order. Consequently, the failure when needed of such equipment could result in serious physical injury or the loss of life, and therefore must be functional to ensure constitutionally safe facilities. *See Jones v. City and County of San Francisco,* 976 F.Supp. 896, 908 (N.D.Cal.1997) (defendants abdicated constitutional responsibility to provide reasonably safe fire protections where, among other problems, fire-rated door assemblies and automatic sprinklers were not installed); *Coniglio,* 657 F.Supp. at 414 (smoke barriers and system of effective smoke management found "necessary to provide minimum fire safety for the plaintiff class as required by the Constitution").

Finally on an allied tack, the evidence suggests that not infrequently, the weekly inspections as presently carried out fail to identify serious problems, such as fire extinguishers that require recharging or improperly blocked exits that could leave individuals trapped should a fire occur. (Tr. 778–79, 781–83) Unfortunately, even when deficiencies were reported, the resultant fire safety violations often went uncorrected from year to year—without explanation. (Tr. 118; 507–11; 528–29) Given this pattern, taken together with the concern of both parties that fire safety equipment be functional at all times, an improved internal procedure is appropriate. The parties are directed to draft such a procedure in consultation with OCC, within sixty days of the date hereof, and to arrange a conference with the Court on or before January 15, 1999 should any problem arise. *See Hoptowit v. Spellman,* 753 F.2d 779, 784–85 (9th Cir.1985) (while the court "need not wait until actual casualties occur" to order relief it should not "tell the administrators of the prison how to cure the unconstitutional conditions").

SO ORDERED.

Footnotes

[1] The fire safety improvements are being undertaken pursuant to three contracts. The C–138 contract entails fire safety improvements proposed for all of the facilities at issue in this litigation. (Tr. 26); Ex. 135. The C–104 contract is a capital program providing for extensive renovations in the borough correctional facilities, and fire safety is an integral component. (Tr. 26–27); Ex. 135. The C–141 contract affects all facilities and any work performed in the kitchen area, with a fire safety component also included. (Tr. 27); Ex. 135.

[2] The improvements are comprehensively detailed in Section I.B of this decision.

[3] Thereafter, status reports are due on the first Monday in each subsequent quarter until further order of the Court.