

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2012-250

ROBERT CANTELL, et al.,
Plaintiffs

Notice sent
2/05/2013
B. T.
S. F. G.

vs.

(sc)

LUIS S. SPENCER, et al.,
Defendants

**MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION
AND DEFENDANTS' MOTION TO DISMISS**

In *LaChance v. Commissioner, et al.*, the Supreme Judicial Court considered an interlocutory appeal of the lower court's denial of qualified immunity to prison officials who had confined an inmate in awaiting action status in a Special Management Unit ("SMU"). See *LaChance v. Commissioner of Correction et al.*, 463 Mass. 767 (2012). While holding that the Defendants were entitled to qualified immunity because the law was not clearly established, the Court held that "as a matter of due process" a prisoner may not be confined in a segregation unit on awaiting action status for longer than 90 days without being afforded "notice of the basis on which he is detained; a hearing at which he may contest the asserted rationale for his confinement; and a posthearing written notice explaining the reviewing authority's classification decision." 463 Mass. at 776-777.

The LaChance Court did not reach the lower court's separate ruling that "LaChance's confinement in the SMU was substantially similar to confinement in a disciplinary segregation

unit and he was entitled to the procedural protections afforded by the DSU regulations.”

LaChance v. Clarke, et al., No. 06-cv-1246. at p. 8. However, it reiterated that the DSU regulations must be followed in any unit where conditions are as restrictive as a DSU, stating:

Although we have never expressly determined that placement in a DSU triggers an inmate’s constitutional right to due process, we have held that under DOC regulations, indefinite confinement in any unit where conditions are substantially similar to those of a DSU entitles an inmate to the protections afforded by the DSU regulations. See [*Haverty*] at 756-57, 759-760, 776 N.E.2d 973.

The Court also concluded that *LaChance*’s conditions in an SMU were “essentially equivalent to those in the system’s designated DSUs, and in some respects even more restrictive,” *LaChance v. Comm’r of Corr. et al.*, 463 Mass. 767, 774 (2012).

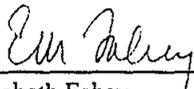
The plaintiffs in the present case are now, or were, held in non-disciplinary segregation in Special Management Units (SMUs). The SJC ordered in *LaChance* “that an inmate confined to administrative segregation on awaiting action status, where such confinement occurs in an area designated as an SMU, a DSU, or otherwise, is entitled, as a matter of due process, to notice of the basis on which he is so detained; a hearing at which he may contest the asserted rationale for his confinement; and a posthearing written notice explaining the reviewing authority’s classification decision.” *LaChance* at 776-777. Conditions in each of the Department of Corrections SMUs are in all material respects identical, as established by the by the Special Management Regulations, 103 CMR 423.00 *et seq.*, and are substantially similar to conditions found to be equivalent to a DSU in both *LaChance* and *Harverty*.

Therefore it is hereby ORDERED that:

- (1) The Defendants must extend the benefits of the SJC; *LaChance* decision to all

prisoners held in administrative segregation on awaiting action status as described above.

- (2) Where the Department of Correction has agreed to apply *LaChance* to all appropriate inmates, class certification is unnecessary;
- (3) Based on the SJC's decision in *LaChance* that the defendants are protected by qualified immunity, these defendants also enjoy that same benefit up to the date *LaChance* issued. For this reason, the defendants' Motion to Dismiss is ALLOWED. This allowance is without prejudice to plaintiffs, or any of them, filing an amended complaint that DOC is failing to properly comply with *LaChance*.



Elizabeth Fahey
Justice of the Superior Court

DATED: January 31, 2013