

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FILED
94 MAY 11 PM 3:59

DWIGHT DURAN, et al.,

Plaintiffs,

vs.

CIV No. 77-0721-JB

BRUCE KING, et al.,

Defendants.

Robert M. Marshall
CLERK-SANTA FE

SECOND STIPULATION ON INMATE ACTIVITY

Pursuant to the First Stipulation on Inmate Activity between the parties filed February 24, 1994, and incorporating the provisions of that stipulation, the parties hereby stipulate as follows:

1. The Defendants shall reduce inmate idleness in accordance with the target percentages for reducing inmate idleness as indicated on the schedule attached hereto as Exhibit "A". Exhibit "A" reflects the target percentages of the inmate population who may be idle as of the stated measuring dates in Exhibit "A". Beginning May 1, 1994 and thereafter for each quarter (the first period ending June 30, 1994), and continuing through the quarter ending June 30, 1995, the Special Master will compile reports on Defendants' progress in achieving the numerical targets for reducing and eliminating idleness that are reflected in Exhibit "A".

The May 1 report shall be in written form. The report will be limited to an audit of the PNM inmate tracking system and



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paragraphs 10 and 14 (of the Modified Decree, Inmate Activity) and paragraph 9 (Administrative Segregation). It shall set forth numerical findings in a format similar to that which appears in pages 31-40 of the Thirty-Fourth Report of the Special Master. The period for suggested changes to the written report shall be limited to seven (7) days.

In the event this report finds that idleness at any of the PNM institutions exceeds the levels set forth in the Thirty-Fourth Report of the Special Master - Report on Inmate Activity at the Penitentiary of New Mexico (PNM-North General Population, 48.9%; PNM-North Administrative Segregation, 57.2%; PNM-Main, 30.5%; PNM-South, 52.6%), the Plaintiffs may unilaterally declare this stipulation, as well as the first stipulation on inmate activity, null and void and seek remedial orders from the Court.

In subsequent quarterly reports, the Special Master will inform the parties whether, in his opinion, Defendants have achieved substantial compliance with the Court's orders on inmate activity, or are making satisfactory progress toward achieving substantial compliance by July 1, 1995. In providing that assessment, the Special Master will set out all of the facts that lead to his conclusion, including facts relating to the following: achievement of the targets in Exhibit "A"; attainment of the provisions of the Defendants' Inmate Activity Plan, including the temporal reference points established by that plan; the establishment of staffing patterns and plans for hiring of additional staff; analysis of physical plant improvement projects and establishment of meaningful activities, including work,

education, recreation, and other programs to accommodate the requirements of at least eight (8) hours a day of meaningful activity for all eligible inmates.

If the Special Master finds in any quarterly report that the Defendants have attained substantial compliance, or are making satisfactory progress toward achieving substantial compliance by July 1, 1995, he will file that report. Plaintiffs agree that they will file no motion or response to any Special Master's report that establishes that Defendants have achieved substantial compliance or are making satisfactory progress toward achieving substantial compliance by July 1, 1995.

If the Special Master finds in the preliminary version of any quarterly report that the Defendants are not making satisfactory progress toward achieving substantial compliance by July 1, 1995, he will consult with the parties about the specific tasks that Defendants must undertake to achieve satisfactory progress, and he will identify those tasks in the final version of his report. The Special Master also will describe in the final version of any such report the steps Defendants have taken or have agreed to take to attain an appropriate level of progress. He will append to the final version of any such report any plans prepared by Defendants that address the tasks to be accomplished and describe the actions Defendants intend to take to complete those tasks.

If the final version of any quarterly report establishes that Defendants have not achieved satisfactory progress, and reflects that Defendants have failed to take all

necessary steps to achieve timely substantial compliance, Plaintiffs will be free to take whatever legal action, including filing any motion, they deem appropriate. The parties agree that any report of the Special Master may be used by either party as evidence in any proceeding brought under this paragraph, but they further agree that the Special Master's reports will not be deemed conclusive evidence of Defendants' violation of this Stipulation or the Modified Decree. The final version of any quarterly report shall be filed no later than thirty (30) days from the end of the quarter.

2. The First Stipulation on Inmate Activity, filed February 24, 1994, provides that the parties will jointly develop an Inmate Activity Plan ("Plan") to facilitate the Defendants' compliance with the inmate activity provisions of the Modified Decree. The Plan provides, in part, for the institution of inmate work details. See, Inmate Activity Plan filed April 22, 1994. Work details, including those already in existence, must provide meaningful activity in accordance with the provisions of the Modified Decree. In the quarterly audits described in paragraph 1, the Special Master shall periodically monitor a sufficient number of work details to determine whether they provide meaningful activity in accordance with the Modified Decree. The Special Master shall document his findings concerning the work details in his quarterly reports. The monitoring and reporting concerning work details shall continue until July 1, 1995.

3. To the extent that intentional actions of class members impede or are intended to impede or prohibit compliance with this Stipulation, Defendants shall not be in non-compliance with this Stipulation.

4. The Defendants warrant that, based on the Inmate Activity Plan filed April 22, 1994, barring construction delays, labor disputes, riot, fire or similar event, they have the financial resources available with monies appropriated for the Duran case in the 1994 legislative session to achieve substantial compliance with the policy statement on inmate activity of the Modified Decree by July 1, 1995.

5. Beginning no later than May 1, 1994, all inmates newly assigned to the Penitentiary of New Mexico will be given the opportunity to be assessed by appropriate staff, using appropriate instruments, techniques, a review of existing RDC data and the inmate's interest, in order to determine their educational, vocational education and work-related needs, interests and goals in connection with the development and implementation of the Inmate Activity Plan as outlined below:

(a) All inmates newly assigned to the Penitentiary of New Mexico will have been given the opportunity to take the TABE Locator at RDC and the TABE at the Penitentiary.

(b) Newly assigned inmates will be given a presentation concerning educational, vocational education and work offerings and processes during the intake orientation at PNM.

(c) All Inmate Literacy Program (ILP) eligible inmates will be interviewed and given interest surveys; the educational file will be reviewed. Further testing will be conducted if there is a referral or functional need demonstrated.

(d) Non-ILP inmates who express an interest in educational programming will be interviewed and given interest surveys; the educational file will be reviewed. Further testing will be conducted if there is a referral or functional need demonstrated.

(e) Inmates will not be required to participate in ILP if they are exempt due to a medical, developmental or learning disability as determined pursuant to Correction Department policies CD-102000 and CD-102001 and §33-11-1 et seq. NMSA.

6. By September 15, 1994, a sample of the current population necessary to determine appropriate activity assessments for all inmates as required by the Modified Decree will be assessed using the same model as that for newly assigned inmates.

7. Inmates who are assigned to the ILP in conjunction with implementation of the Plan will not be required to relinquish their job assignments as a result of assignment to the ILP, but instead will be assigned to an ILP class during non-working hours with the following exceptions:

(a) Any inmate who has been assigned to a job for less than six (6) months.

(b) Any inmate who has voluntarily left a job assignment.

(c) Any inmate who has been removed for misconduct or failure to perform a job satisfactorily.

(d) Any inmate who has been transferred from one facility to another so long as the transfer is not for the purposes of placement in ILP.

(e) Any inmate who has been placed in disciplinary segregation.

An inmate previously removed from work assignment for placement in ILP will be given an opportunity to be reinstated in such work positions or a job with comparable pay, as well as an opportunity to complete ILP requirements at a time that does not interfere with the work assignment subject to the above listed exceptions.

8. Compliance with the Plan and this Stipulation will be achieved without any substantial deprivation of existing rights to which members of the Plaintiff class are entitled under the Modified Decree at the PNM complex.

9. Neither this Stipulation nor the Inmate Activity Plan filed April 22, 1994, are to be construed as modifications of the Modified Decree.

10. The instant Stipulation shall be effective upon its approval by the Court.

11. Unless terminated as provided in paragraph 1, above, the First and Second Stipulations on Inmate Activity shall expire on July 1, 1995.

STIPULATED AND APPROVED:

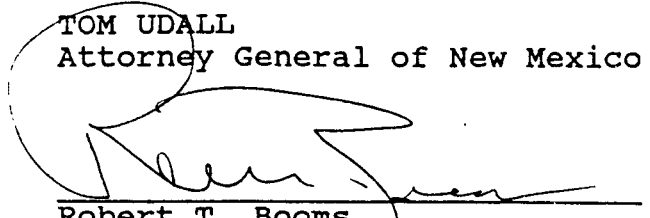
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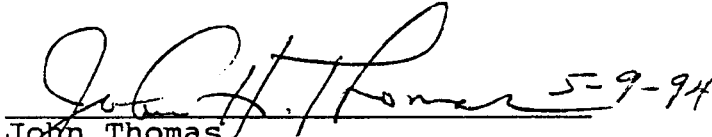


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APPROVED:



Eloy Mondragon
Corrections Secretary



John Thomas
Warden, Penitentiary of New Mexico

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EXHIBIT A

TARGET PERCENTAGES FOR REDUCING INMATE
IDLENESS SHOWING PERCENT OF INMATES WHO MAY BE IDLE*

	MAIN	SOUTH	NORTH VOLUNTARY AD SEG	NORTH INVOLUNTARY AD SEG	NORTH GENERAL POPULATION
5/1/94		ADVISORY AUDIT PER PARAGRAPH 1			
7/1/94	20	38	60	45	38
10/1/94	10	26	50	30	26
1/1/95	0	14	37	15	14
4/1/95	0	0	18	0	0
7/1/95	0	0	0	0	0

*For calculation of target percentages, the following inmates shall not be counted as idle or as part of the inmate population: Inmates in orientation, inmates housed in the infirmary, inmates who are prohibited from participating in all work or education programs due to a medical condition, inmates housed in disciplinary segregation or pre-hearing detention, inmates who are assigned to thirty day evaluation for administrative segregation, or inmates who refuse to participate in Inmate Activity programs. For the purposes of the July 1994 audit, all inmates who are identified by the Court's expert or the Department's Mental Health Services as being inappropriately placed in Administrative Segregation shall not be counted as idle or as part of the inmate population. For the purposes of the October 1994 and January 1995 audit, such identified inmates shall not be counted provided that the defendants have submitted a plan approved by the Court's mental health expert which provides a date by which such inmates will be housed in an appropriate facility and the identified inmates are housed in accordance with the Mental Health Plan. For all audits after March 31, 1995, such identified inmates shall be counted as part of the inmate population.

EXHIBIT "A"