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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 SRI LOUISE COLES, et al.) File No. C03-2961 TEH (JL)
11)
12 Plaintiffs)

13 vs.) File No. No. C 03-2962 TEH (JL)

14 CITY OF OAKLAND, a municipal entity, et al.) Hon. Thelton E. Henderson
15)

16 Defendants) **STIPULATION AND ~~(PROPOSED)~~ ORDER**
17 LOCAL 10, INTERNATIONAL LONGSHORE) **APPROVING PARTIAL SETTLEMENT OF**
AND WAREHOUSE UNION, et al.,) **PLAINTIFFS' CLAIMS FOR INJUNCTIVE**
18) **RELIEF**

19 Plaintiffs,

20 vs.

21 CITY OF OAKLAND; et al.,

22 Defendants.
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STIPULATION

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2 All parties to these partially consolidated cases, by and through their attorneys, hereby
3 stipulate and agree that they have resolved the Plaintiffs' claims for declaratory and/or injunctive
4 relief against Defendant City of Oakland, insofar as those claims relate to the policies for Crowd
5 Control by the Oakland Police Department. Police Chief Richard Word formally approved the OPD
6 Crowd Control/Crowd Management Policy on November 9, 2004 (hereafter referred to as OPD
7 Crowd Control Policy.) A copy of the agreed new OPD Crowd Control Policy is attached and
8 incorporated hereto as Exhibit A.

9 Defendants contend, throughout this paragraph, as follows: Following the April 7, 2003
10 incident Oakland City officials immediately began a legal and operational assessment of the OPD
11 Crowd Control Policy, including an analysis of use of force in crowd control situations. The City
12 Attorney's recommendation in mid-April 2003 to OPD was to immediately take identified, specific
13 enumerated steps to assure that the Crowd Control Policy was in compliance with federal and state
14 laws. In furtherance of the City Attorney's recommendation and from a police "best practices
15 perspective" Police Chief Richard Word convened an internal review board to review applicable
16 OPD policies and make recommendations to the Chief. The Review Board met on May 22, 29 and
17 June 5, 2003. On December 11, 2003 Chief Word publicly announced changes to applicable OPD
18 crowd control and use of force policies. These policy changes were later set forth in Special Order
19 No. 8135. Chief Word further announced the drafting of a new written OPD Crowd Control Policy
20 and that he would meet and confer with plaintiffs' legal representatives about said policy. Thereafter
21 the parties exchanged draft policies and began a meet and confer process resulting in a consensus on
22 a new OPD crowd control policy document.

23 This Policy was the result of over ten months of difficult, comprehensive and non-collusive
24 negotiations between the parties. Numerous drafts and counter drafts were exchanged and discussed
25 before agreement was reached. Counsel for the plaintiffs met twice directly with OPD officers,
26 including Chief Word, and had numerous meetings and discussions with defendants' attorneys. The
27 respective clients have been kept informed by their attorneys of the substance of these negotiations,
28 of the resulting agreement on the OPD Crowd Control Policy, and have agreed to it as the basis for a
partial settlement of this case.

1 The Oakland Police Department also agrees as part of this Stipulation and Order that it will
2 provide training as set forth in the new OPD Crowd Control Policy at section XII (A-D). The parties
3 agree to meet and confer regarding the Department's proposed training program and its scheduling.
4 Any disagreements between the parties regarding the proposed training program and its scheduling
5 may be submitted to the Court for resolution.

6 Plaintiffs Sri Louise Coles et al., lawsuit (No. C03-2961 TEH (JL)), set forth their injunctive
7 relief claims relating to the OPD Crowd Control Policy in their Request for Relief at (d) i-vi; viii of
8 their Second Amended Complaint. Plaintiffs Coles et al. also set forth such claims for such
9 injunctive relief in Request for Relief paragraph (e). Plaintiffs Local 10, International Longshore and
10 Warehouse Union et al., lawsuit (No. C 02-2962 TEH (JL)), set forth their injunctive and declaratory
11 relief claims in their Prayer for Relief at paragraphs 2 and 3 of their Third Amended Complaint. In
12 consideration of the agreement and consensus on the wording of the new OPD Crowd Control Policy
13 between the parties, the plaintiffs in each case (hereinafter "Plaintiffs") will dismiss with prejudice
14 their declaratory and injunctive relief claims related to this agreement as set forth above in their
15 respective requests for relief. The class alleged in the Third Amended Complaint by plaintiffs Local
16 10 et al (paragraphs 20-27) was never certified by the Court, and thus these class allegations are
17 dismissed without prejudice.

18 Defendants City of Oakland et. al, in both cases agree to this partial settlement without
19 admitting liability. Defendants' non-admission of liability does not affect Plaintiffs' claims for
20 attorneys fees and costs related to this partial settlement.

21 All parties reserve all claims and defenses relating to Plaintiffs' damages claims, including all
22 claims and defenses relating to municipal and supervisory liability pertaining to the April 7, 2003
23 incident which is more fully described in the respective lawsuits and incorporated herein as though
24 fully set forth. All parties also reserve all claims and defenses relating to Plaintiffs' claims for
25 attorneys' fees and costs in connection with this settlement of the claims for declaratory and
26 injunctive relief regarding the OPD Crowd Control Policy in both lawsuits and with all other claims
27 more fully set forth in both lawsuits.

28 All parties further agree to continue to meet and confer concerning the full resolution of

1 Plaintiffs' remaining claims for injunctive relief and Plaintiffs' claims for attorneys' fees and costs, as
2 well as the following: (1) any converting of this OPD Crowd Control Policy into a more concise
3 policy document with related training bulletins, each of which would also constitute Oakland Police
4 Department policy; (2) related training requirements and procedures to implement the training
5 requirements set forth in the new OPD Crowd Control Policy as set forth above ; (3) any material
6 change to the terms of this policy, including any new incorporation of use of force technology and/or
7 other uses of force for crowd control before such changes are actually made into crowd control
8 policy; and (4) certain other policies and procedures of the Oakland Police Department related to this
9 OPD Crowd Control Policy or Plaintiffs' remaining claims for injunctive relief.

10 With respect to Plaintiffs' claims for attorneys' fees and costs related to this partial settlement,
11 the parties agree to the following procedure for resolution of such claims: (1) Plaintiffs' counsel will
12 provide Defendants with written demands for such claims; (2) after the submission of those written
13 demands, the parties will meet and confer for forty-five (45) days, commencing no earlier than
14 January 1, 2005, to try to resolve such claims; (3) if the parties are unable to resolve such claims, then
15 at the expiration of that meet and confer period, Plaintiffs may file a motion for reasonable attorneys'
16 fees and costs with the Court.

17 The parties stipulate and request that this Court approve this partial settlement and that this
18 Court retain jurisdiction of this matter after these claims are dismissed to enforce the terms of this
19 settlement, to resolve any disputes that may arise between the parties concerning this settlement or
20 the matters set forth in the preceding paragraphs, and if necessary, to resolve Plaintiffs' claims for
21 attorneys' fees and costs. The parties further stipulate and request that this Court retain jurisdiction
22 for three (3) years from the date of filing of this Stipulation and Order with the proviso that within
23 that three year time period any party may move the court to extend the time for up to an additional 24
24 months if there is a material breach of the terms of this Stipulation.

25 Pursuant to this stipulated partial settlement, Plaintiffs agree to dismiss their claims for
26 declaratory and/or injunctive relief related to the OPD Crowd Control Policy to the extent those
27 claims have been settled as provided herein and subject to this Court's retention of jurisdiction as
28 described herein.

1 Dated: December 20, 2004

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3 _____
4 ALAN L. SCHLOSSER
5 AMERICAN CIVIL LIBERTIES UNION
6 FOUNDATION OF NORTHERN CALIFORNIA
7 Attorney for Plaintiffs in Local 10, et al.

8 Dated: December 20, 2004

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13 Attorney for Plaintiffs in Local 10, et al.

14 Dated: December 20, 2004

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17 JOHN L. BURRIS
18 Attorney for Plaintiffs in Local 10, et al.

19 Dated: December 20, 2004

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24 Dated: December 20, 2004

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27 MICHAEL J. HADDAD
28 Attorney for Plaintiffs in Sri Louise Coles, et al.

Dated: December 20, 2004

GREGORY M. FOX
Attorney for Defendants City of Oakland et al.

Dated: December 20, 2004

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Chief Asst. City Attorney
CHARLES VOSE, Deputy City Attorney
Attorneys for Defendants City of Oakland, et al.

ORDER

THIS COURT, having carefully monitored the parties' progress in this matter, having been informed of the substance of the parties' partial settlement agreement including the new OPD Crowd Control Policy which is attached and incorporated herein, and based on the stipulation of the parties,


THIS COURT HEREBY ORDERS THAT the parties' partial settlement of Plaintiffs' claims for injunctive relief as described in the parties' stipulation and as set forth in the attached proposed policy is APPROVED.

THIS COURT FURTHER ORDERS THAT Plaintiffs' claims for injunctive relief pertaining to the Oakland Police Department's written Crowd Control Policy shall be dismissed pursuant to the parties' partial settlement and stipulation, subject to this Court's retention of jurisdiction as described herein.

THIS COURT FURTHER ORDERS THAT this Court shall retain jurisdiction of this matter after these claims are dismissed for a three year period commencing with the date of filing of this Order to enforce the terms of this settlement, to resolve any disputes that may arise between the parties concerning this settlement or the related matters on which the parties agree to meet and confer as set forth in the parties' stipulation, and if necessary, to resolve Plaintiffs' claims for attorneys' fees and costs. Within that three year time period any party may move the Court to extend this time period up to an additional 24 months in the event of a material breach of the terms of the Stipulation.

BY STIPULATION OF THE PARTIES, IT IS SO ORDERED.

12/24/04
DATE


THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE