

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DENNIS E. JONES'EL, *et al.*, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

GERALD BERGE, *et al.*

Defendants.

FIRST MEDIATION REPORT

00-C-421-C

On May 5, 2006, Judge Crabb appointed me to assist the parties in resolving their disputes over the amendments to the settlement agreement in this case. *See* *dk*t. 8. On May 8, 2006, I met with representatives for both sides off the record to address the time-sensitive dispute over defendants' motion to reappoint Walter Dickey as the monitor of the settlement agreement. It became clear during the morning's confidential discussions that this particular dispute will not be resolved without a court order.

Judge Crabb already has set up a briefing schedule on defendants' motion and has scheduled a hearing for 8:30 a.m. on May 12, 2006. These dates and times remain in place. Also, the parties had stipulated to a brief extension of the status quo regarding the monitor in anticipation of resolution by May 12, 2006. So far, so good.

At the risk of being accused of looking for trouble, I will mention some possibilities that might affect the court's decisionmaking process. First, it is possible that plaintiffs, in

opposition to defendants' motion, will submit contentions supporting their position and might choose to back up their contentions with documents or affidavits. It is equally possible that defendants will reply with contrary contentions that they will back up with their own documents and affidavits. If this occurs, then it is possible that the parties' factual contentions will contradict each other and it is further possible that any contradiction(s) will involve facts material to resolution of defendants' motion. If all of these possibilities vest, then how will the court determine the facts? One option is to hold an evidentiary hearing of a scope to be determined after reviewing the parties' submissions. Given the direct and cross-examinations that likely will occur at any such hearing, it would be fair to characterize this as an unpalatable option. It is, however, a path the court could choose after reviewing the parties' submissions.

Complicating matters a bit further, plaintiffs have not yet decided whether they will stipulate to an additional extension of the status quo regarding the monitor. Their position is that when the monitor's term expires, the court has no power to extend it. Assuming simply for scheduling purposes that the court *does* have the power to extend the monitor's term, may it do so *after* the monitor's term has expired? If not, and if plaintiffs do not stipulate to an additional extension of the status quo to allow for the possibility of an evidentiary hearing, then the court might be constrained to rule on defendants' motion on May 12, 2006 without the possibility of convening a timely evidentiary hearing. Plaintiffs will announce their position on a second extension in their May 9, 2006 response brief. The

court will be in a better position to decide how to proceed after it has reviewed the parties' submissions.

Switching gears slightly, at the May 8, 2006 session I asked the parties if they wished to address any of their other disputes pending a decision on the monitor motion. Perhaps not surprisingly, the parties took contrary positions. In light of this, I will wait to hold any additional mediation sessions until the court has ruled on defendants' motion to extend the monitor's term.

Entered this 8th day of May, 2006.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge