IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIE ROY LOVE,

Petitioner, ORDER

v. 06-C-722-C

SGT. JAEGER, Bathhouse Supervisor;
ELIZABETH LEMERY, Management Services Director;
WILLIAM POLLARD, Warden of Green Bay
Correctional Institution,

Respondents.

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In an order dated January 30, 2007, I stayed a decision whether petitioner would be allowed to proceed in forma pauperis in this action on an equal protection claim, because it was not clear that petitioner intended to raise such a claim. I explained to petitioner that his complaint could be understood to allege a possible claim that respondents Jaeger, Lemery and Pollard violated his Fourteenth Amendment equal protection rights by intentionally, for the purpose of discriminating against petitioner and his co-workers in the bathhouse, reducing petitioner's pay while leaving intact a higher pay for similarly situated prisoners. I told petitioner that if he decided to pursue such a claim, his burden of proof would be high.

He would have to prove not only that he was similarly situated to other prisoners working jobs outside the bathhouse at the Green Bay Correctional Institution, but that each respondent was responsible for determining the level of pay to be given prisoners in their jobs; there was no rational basis for the decision to pay him and other bathhouse workers a lower salary; and the decision to reduce his salary was intended to discriminate against him because of his identification as a worker in the bathhouse. Now petitioner has submitted a response dated February 8, 2007, in which he says that he wishes to pursue an equal protection claim against each of the respondents. Although I will grant petitioner leave to proceed on his equal protection claim, a word about precisely what I understand the claim to be is warranted.

In his February 8 submission, petitioner reiterates his allegation that respondent Jaeger deliberately submitted "an incorrect pay sheet indicating the work hours were 30 instead of the actual 40," that respondent Lemery "knew that respondent Jaeger submitted incorrect pay sheets indicating 30 hours instead of the correct 40 hours" and that respondent Pollard "was made aware of this situation" and did nothing about it. This statement can be understood to mean two different things. Petitioner might be saying that the pay sheet was "incorrect" because, in the past, he had been paid for 40 hours' work even when he did not work 40 hours, or he might be saying that the pay sheet was "incorrect" because he did not receive pay for 10 hours a week that he actually performed at his job.

In the January 30 order, I told petitioner that if he is contending that he worked a full 40 hours but was paid for only 30, his claim does not belong in federal court. He has remedies available to him in state court for recovering property or pay wrongfully taken from him. Moreover, it would be absurd for petitioner to suggest that the equal protection clause requires respondents who incorrectly calculate the work hours of inmates in one department to repeat the error on the pay statements of other prisoners. Therefore, I understand petitioner's claim to be that respondents modified his pay and the pay of other inmates in the bathhouse to reflect the actual number of hours the bathhouse employees worked but continued to pay inmates in other jobs a salary rounded up to 40 hours, even when those inmates did not work a full 40 hours. (This is the claim petitioner appears to have made in the inmate grievances attached to his complaint.) I have grave doubts that petitioner will be able to prove that respondent Jaeger, the bathhouse supervisor, was responsible for setting the pay levels for inmates working jobs outside his supervision area. In addition, it is not probable that petitioner will be able to prove that respondents Lemery and Pollard purposely allowed inflated hours to be reported on the pay statements of inmates working in other jobs in prison but approved Jaeger's decision to reflect accurate hours on the pay statements of inmates working in the bathhouse for the purpose of discriminating against the bathhouse workers. Nevertheless, at this early stage of the lawsuit, I cannot say that petitioner could prove no set of facts in support of his equal protection claim.

ORDER

IT IS ORDERED that

1. Petitioner is GRANTED leave to proceed in forma pauperis on his claim that respondents Jaeger, Lemery and Pollard violated his equal protection rights by reducing his salary and not the salaries of similarly situated inmates in order to discriminate against petitioner and the other bathhouse employees.

2. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

3. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

4. As I told petitioner in this court's January 30 order, the unpaid balance of his filing fee is $334.39; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

5. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's complaint, this order, the order of January 30, 2007 and petitioner's February 8, 2007 response to the January 30 order are being sent today to the Attorney General for service on the state defendants.

Entered this 15th day of February, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge