

May 22, 1979

CC 5/29

R Nelkin: It is my view that when the Court disregards comments from DPW to draft orders, we should not seek clarification. Items 1, 2, 3 have only tangential relationship to employees; County plans and other actions may counter. 4, 5 & 6 are examples of Court carelessness and an appeal & stay could be used to effect necessary and appropriate employee plan. I prefer to have a remand, rather than rejection of our request for modification.

HBO 5/28
CC/Karen Snider

SUBJECT: Action Memorandum - URGENT

TO: Helen B. O'Bannon
Secretary of Public Welfare

FROM: Robert Nelkin
Special Assistant to the Secretary
and
Karen F. Snider,
Acting Deputy Secretary, Mental Retardation

Issue:

What action should the Commonwealth take in response to the April 16, 1979 Federal Court Order?

Requested Action Date:

Decision needed immediately so attorneys can follow through.

Background:

The April 26th Court Order provides services to Pennhurst employees to help them find alternate employment. The Order also includes the "Projected Movement of Pennhurst Center Employees."

A decision is necessary if we want to appeal, stay, modify, or implement this Order.

Alternatives:

Option A: Appeal the Order

Option B: Appeal the Order and seek a stay

Option C: Seek modifications of Court Order

Option D: Take no legal action and implement Order

Discussion:

The Commonwealth is concerned for the future of Pennhurst Center's employees who will probably lose their jobs if the Court Orders are implemented. The Commonwealth agrees that assistance should be provided to these employees.

The Commonwealth does not agree to some of the specific elements and arrangements.

The Commonwealth agrees that the residents should be moved from Pennhurst Center to the community. The Commonwealth does not agree to the schedule of movement "projected" in this Order.

A decision to appeal (A or B) indicates that the Commonwealth is opposed to services to employees who will lose their jobs and opposed to moving residents from Pennhurst to the community.

Our real interest now is to change the Order (C) so that it's workable. If the schedule of movements is not possible, let's propose an alternate schedule. Likewise, let's propose every change that the Commonwealth wants to be made in this Court Order.

The course of "no legal action and implementation of Order" (D) should be followed if we have no major disagreements, or if there is little likelihood that we will prevail in our arguments.

Recommendations:

1) (Option C) - The Commonwealth should seek to modify the April 26, 1979 Court Order so that it is possible to implement.

2) Propose to modify as detailed on Attachment A.

Approve: _____

Disapprove: _____

Schedule Meeting
to Discuss: _____

Date: _____

Next Step:

1) Inform Commonwealth attorneys of this decision.

Coordination/Concurrence:

Office of Legal Counsel - Mr. Adams

Concur _____ Date _____

Non-concur _____

Office of Management Services - Mr. Erb

Concur _____ Date _____

Non-concur _____

cc: Mr. Adams
Mr. Erb
Dr. Rice
Mrs. Snider
Mr. Cuddy
Mr. Nelkin

April 26, 1979 Court Order
Halderman v. Pennhurst

Commonwealth Proposed Changes:

1. Page 14 -- change from 115 to 52 the number of residents to be moved by June 30, 1979.

The Court's projection was based on DPW's Pennhurst Dispersal Plan, which was subsequently abandoned by the Secretary on March 20, 1979. According to DPW's current plans, 52 Pennhurst residents are scheduled to move to the community between March 1st and June 30th.

2. Reduce the "projected" rate (100 residents every three months) of movement from Pennhurst to the community.

Office of Mental Retardation projects, based on past experience, that two to ten persons can be moved into the community each month. The average movement over the last 21 months has been six persons from Pennhurst a month. (Western Region, with far less population, has moved an average of 38 persons into the community each month. Southeast Region has moved an average of 18 persons a month into CLA's over the last two years). A compromise acceptable to the Court, plaintiffs, and defendants should be sought of between six and 33 residents moving each month.

3. Clarify that the movement of residents (Page 14) will occur only after the previously-ordered projections and procedures (i.e. Individual Habilitation Plans, etc.) are accomplished. This will insure that the "projected movement" is a goal and not an order. This statement will clarify that this is not a wholesale "dumping" of Pennhurst residents.

4. Delete the term "will be laid off" from Page 12. Replace with the term, "may no longer be needed."

The Federal Court should allow the Commonwealth flexibility to employ Pennhurst employees in accordance with Commonwealth needs, laws, regulations, and agreements. Since the Court's primary interest is the welfare of Pennhurst residents, the Court should allow the Commonwealth freedom in administrative areas. Perhaps DPW might transfer employees or reduce hours, rather than lay off employees.

5. Page 6 -- A maximum amount of "state payment of education tuition and training costs" to be expended per employee and total for all employees should be stated.

Irv Rosenstein, the Director of the Office of Employee Services, set a cap for tuition payment at \$45,000 per year for three years. (Figured at

75 employees x \$600). The individual employee is allowed one year of tuition at a maximum of \$1,000 or 12 college credits. Since this set of maximums exists and is an alternative to unlimited costs of retraining, these limits should be added to the Order.

6. Add a provision which continues and guarantees the Commonwealth's Rights as Employers. At the Court hearing on this plan, Judge Broderick said he would include such a provision. The Judge failed to include this provision. Coupled with Court-ordered continuation of current labor agreements, this provision will reduce disruption of current personnel practices.

Attached are comments from:

- 1) Office of Mental Retardation
- 2) Bureau of Labor Relations, Office of Budget and Administration
- 3) DPW Management Services.