

**COPY**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CLEVELAND FIREFIGHTERS FOR )  
FAIR HIRING PRACTICES, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CITY OF CLEVELAND, et al., )  
 )  
Defendant. )

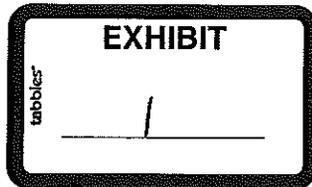
CASE NO. 1:00 CV 0301  
JUDGE JOHN M. MANOS

\*\*\*\*\*  
LAMONT C. HEADEN, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CITY OF CLEVELAND, et al. )  
Defendants )

CASE NO. C73-330  
JUDGE JOHN M. MANOS  
SECOND AMENDED CONSENT DECREE

PRELIMINARY MATTERS

WHEREAS, by order dated April 25, 1975, the Honorable Robert B. Krupansky found that the City of Cleveland had unlawfully discriminated against minorities in the hiring of firefighters. Headen v. City of Cleveland, No. C73-330 (ND Ohio, April 25, 1975). *See also* Local Number 93 v. City of Cleveland, 478 U.S. 501, 505-507, 106 S.Ct. 3063 (Brennan, J. 1986) (expressly



recounting the numerous judicial findings that the City of Cleveland had unlawfully discriminated against minorities in the recruiting, hiring and promotions of City police officers and firefighters).

WHEREAS, pursuant to Judge Krupansky's April 25, 1975 Order, the parties entered into a Consent Decree in C73-330 requiring the City of Cleveland to implement specific procedures for the recruitment and hiring of minorities to remedy the effects of the City's past discrimination. The consent decree was approved and adopted by the Honorable John M. Manos on January 17, 1977. (*See Exhibit A, attached*).

WHEREAS, the *Vanguards of Cleveland* were thereafter made parties to the litigation and actively participated in the effort to recruit and tutor minority candidates.

WHEREAS, in 1984, pursuant to the *Vanguards of Cleveland's* motion to modify the 1977 consent decree, the parties entered into an Amended Consent Decree redefining but not expanding the remedial provisions of the Consent Decree. The amended consent decree was approved and adopted by the Honorable John M. Manos on May 21, 1984. (*See Exhibit B, attached*).

WHEREAS, both the original Consent Decree and the Amended Consent Decree provided a formula in order to remedy past discrimination which can be generally described as follows: The ratio of minorities to non-minorities hired may not be less than the ratio of minorities to non-minorities who passed any given entrance examination (the "Headen Ratios").

WHEREAS, on January 26, 2000, the City of Cleveland filed a Motion to Stay Further Execution of the Amended Consent Decree.

WHEREAS, the *Cleveland Firefighters for Fair Hiring Practices* subsequently brought suit on February 1, 2000 challenging the 1977 consent decree and the 1984 amended consent decree on constitutional grounds.

WHEREAS, the Vanguard of Cleveland has defended the validity of the Amended Consent Decree and has further contended that the City of Cleveland has continued to engage in discriminatory practices against minorities in hiring to the present day, a contention which is denied by the City of Cleveland and Cleveland Fire Fighters for Fair Hiring Practices.

WHEREAS, on February 2, 2000, following a hearing attended by all parties to both lawsuits and upon opposition by the Vanguard, the Court denied the City's Motion to Stay further Execution of the Amended Consent Decree.

WHEREAS, since February 2, 2000, all parties have, with the encouragement of the Court, mutually engaged in informal discovery and in good faith negotiations to resolve their differences.

WHEREAS, these negotiations have also included the participation of the collective bargaining representative of the Cleveland Firefighters, Local 93 of the International Association of Firefighters.

WHEREAS, 38.1% of those individuals who met the qualifications to sit for the most recent Firefighter examination and who actually took the written examination were minorities.

WHEREAS, as of 2000, only 26% of the City's firefighters were minorities.

WHEREAS, although disputed by Firefighters for Fair Hiring Practices, the City and the Vanguard believe that the Second Amended Consent Decree is necessary to fully remedy the effects of the City's past discrimination in the hiring of firefighters, and to prevent any further discrimination in the future.

WHEREAS, consistent with the Supreme Court's directives in a series of cases including but not limited to City of Richmond v. J.A. Croson, 488 U.S. 469, 109 S.Ct. 706 (1989) and Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 115 S. Ct. 2097 (1995), as well as the Sixth Circuit's

guidance in Aiken v. City of Memphis, 37 F.3d 1155 (6th Cir. 1994), the parties, and the International Association of Firefighters Local 93 ("Local 93"), desire to resolve these actions and to preclude any further extension and/or modification of the consent decrees except as provided herein.

THEREFORE, the parties with the participation of Local 93 have consented to the entry of this Second Amended Consent Decree:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

The amended decree is further modified, in accordance with the agreement of the parties to Case No. C73-330 and Case No. 1:00 CV 0301, and with the participation of the Cleveland Firefighters, Local 93, as follows:

1. The Headen decree shall remain in full force and effect until the City of Cleveland Department of Public Safety, Division of Fire, reaches a 33 1/3 % minority makeup or until the City has established and hired cadets from three eligible lists, (which shall include the current list originally certified in 1999 and herein referred to as the "1999 Eligible List"), whichever occurs first. Pursuant to Civil Service Rules, eligible lists are valid for two years. However, recognizing the lifespan of three lists and the possible need for some additional administrative time, the City will have three lists (including the 1999 Eligible List which expires on September 28, 2002) established and appointments made therefrom before September 29, 2008. The parties understand that there may be legitimate circumstances which may prevent the City from establishing and hiring from the two additional eligible lists anticipated herein within the prescribed time. If the City is unable to establish three lists

(including the 1999 Eligible List) and hire therefrom before September 29, 2008, the City may petition the Court for a reasonable extension of time within which to establish the remaining eligible lists and make appointments therefrom during the life of said lists. Such a petition by the City shall be approved for a reasonable time, provided that the City has made a good faith effort to meet the September 29, 2008 deadline. The percentage makeup of the Division of Fire shall be computed by determining the percentage of minorities (as defined by the decree) within the uniformed ranks of the Division of Fire, regardless of rank.

2. The parties agree that they are committed to negotiating and implementing a plan for "reinvigoration of the prior recruitment and training efforts" for the entry level position of fire fighter in a manner which will be focused upon City residents and to further institute a new component funded by the City of Cleveland which will focus upon teaching high school students to become skilled in those abilities which are required to perform well on aptitude tests used by civil service commissions with special emphasis on those skills needed to excel in the fire entrance examination administered by the City of Cleveland. The parties agree that the plan will be substantially in accord with the outline attached hereto as Exhibit C, with the further understanding that, notwithstanding any language currently contained in the Headen decree, this program will be made available to students and adults regardless of race, and the City cannot commit to appointing any individuals who will be associated with this program based upon that individual's race or national origin.

The parties agree, based upon this general outline, to negotiate in good faith on the details of this plan. The parties also acknowledge that educational professionals should be consulted in developing and implementing the plan. If, by year's end (2000), the parties have not reached a complete agreement regarding this plan, the issue shall be submitted to the Court for resolution. The incomplete status of this issue shall not affect the agreement of the parties on the remaining terms agreed to in this Second Amended Consent Decree.

If the goal of 33 1/3% has not been met by the expiration of the third eligible list referenced in paragraph one, the parties shall have the right to petition the court on the single issue of continuing the recruitment and training program established by the parties pursuant to this paragraph. The right to petition the court on this sole issue shall not affect the remaining terms agreed to herein.

3. The parties agree that, for purposes of the 1999 Eligible List, the written component shall be rescored so that a passing score on the written exam shall be 26.5 or two (2) standard deviations below the mean test score. For future written exams during the life of the decree, the minimum possible passing score shall be two (2) standard deviations below the mean written test score.

For purposes of calculating the composite passing score (*i.e.*, 70%) on the City of Cleveland Civil Service examination for purposes of becoming a firefighter, the practice of the Civil Service Commission has been to afford equal weight (*i.e.*, 50% for each) to the PAT (physical agility test) and to the CAT (cognitive ability

test) portions of the examination. During the term of the Headen decree, this practice shall remain unchanged.

4. The City agrees to pay attorneys' fees and expenses to counsel for the plaintiff class, Firefighters for Fair Hiring Practices, in the sum of forty thousand dollars (\$40,000). The matter of fees and expenses for the Vanguard is reserved for consideration by the Court upon application by the Vanguard. The City reserves the right to oppose said application.
5. The existing method of assigning seniority to persons on the eligible list shall be continued during the life of this Second Amended Consent Decree.
6. For the duration of the Headen decree, the Secretary of the Civil Service Commission will notify, in advance, designated representatives of the Cleveland Firefighters for Fair Hiring Practices, Local 93, and the Vanguard, of the date and location of the Commission meeting regarding approval of an eligibility list for firefighters pursuant to this Second Amended Consent Decree. At this meeting, the City will make available data regarding test scoring, passing applicants, and the calculation of the hiring ratio. Once the final list is ratified, the Commission receives a Final Report from the testing consultant. The Secretary will forward a copy of this Report to the designated representatives. Prior to any appointments being made from the eligible list, the designated representatives of the Firefighters for Fair Hiring Practices, Local 93, and the Vanguard will be given a fair opportunity to evaluate all relevant data, and if necessary to appeal to the Commission regarding the composition of the eligible list, and if further review is necessary, to petition the Court. Furthermore,

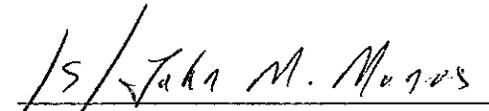
the Commission Secretary shall be available, upon reasonable notice, to further discuss with said designated representatives any issues pertaining to application or interpretation of the terms of the Decree, and to provide any relevant information pertaining thereto. In addition, the Firefighters for Fair Hiring Practices, Local 93, and the Vanguardians shall remain or become parties for the duration of the Headen decree, and shall have the right to petition the Court whenever it is believed that the City is not faithfully complying with the dictates of the Decree.

The Secretary of the Civil Service Commission shall also notify representatives from the Firefighters for Fair Hiring Practices, Local 93 and the Vanguardians prior to selecting a consultant to develop and administer a fire entrance exam. Representatives from these groups will be afforded a reasonable opportunity to offer their opinions regarding possible consultants before said selection has been made.

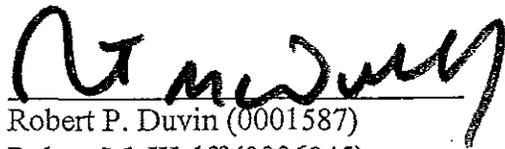
7. The City is committed to provide vigorous enforcement of the Civil Service Rules in regard to the award of residency points for applicants.
8. By no later than January 1, 2008, the City shall (with the assistance of qualified testing consultants and input from the Firefighters for Fair Hiring Practice, Local 93, and the Vanguardians) have undertaken a reevaluation of the entrance examination process. Attention shall be paid to the validity of the written and physical examinations and their relative weights and possible alternative methods of selection to insure merit-based hiring and to further insure that testing does not unlawfully discriminate against any applicant based upon race or gender. Changes, if any, in the

entrance examination process shall not be implemented until after the termination of the Headen decree in accordance with this Judgment.

9. The plaintiff class will be provided notice of the above agreement by Court Order.
10. This agreement is the result of language submitted by all parties. Proposed drafts or rejected proposals may not be used to guide the future interpretation or construction of this second amended consent decree.
11. The Court shall retain continuing jurisdiction over this second amended consent decree.

  
\_\_\_\_\_  
Judge John M. Manos  
United States District Judge

APPROVED IN FORM AND SUBSTANCE



Robert P. Duvin (0001587)

Robert M. Wolff (0006845)

Kenneth D. Schwartz (0070753)

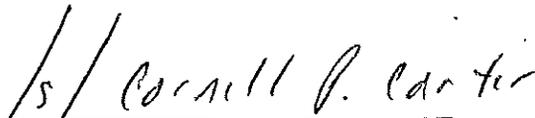
DUVIN, CAHN & HUTTON

20<sup>th</sup> Floor - Erievew Tower

1301 E. 9<sup>th</sup> Street

Cleveland, OH 44114-1886

(216) 696-7600



Cornell P. Carter (0062986)

Law Director

Pinkey S. Carr (0061377)

Chief Counsel

Theodora M. Monegan (0039357)

Assistant Director of Law

CITY OF CLEVELAND

601 Lakeside Avenue, Room 106

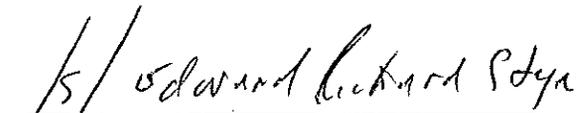
Cleveland, OH 44114-1077

(216) 664-2800

Attorneys for Defendant,

CITY OF CLEVELAND

APPROVED IN FORM AND SUBSTANCE

Handwritten signature of Edward Richard Stege in cursive script, written over a horizontal line.

Edward Richard Stege (0029363)

Stege & Associates Co. L.P.A.

The BP America Building Suite 3220

200 Public Square

Cleveland, OH 44114

(216) 348-0700

Attorney for the VANGUARDS

APPROVED IN FORM AND SUBSTANCE

*/s/ W. Craig Bashein*

W. Craig Bashein (0034591)  
Bashein & Bashein Co., L.P.A.  
1200 Illuminating Building  
55 Public Square  
Cleveland, OH 44113  
(216) 771-3239  
Attorney for Plaintiff,  
CLEVELAND FIREFIGHTERS  
FOR FAIR HIRING PRACTICES

*/s/ Gary Meador*

Gary Meador (0037051)  
Law Firm of Garnett R. Meador  
P.O. Box 24632  
Cleveland, OH 44124  
(440) 460-0222  
Attorney for Plaintiff,  
CLEVELAND FIREFIGHTERS FOR FAIR HIRING PRACTICES