

United States District Court, C.D. California, Western Division.

Jeff D. PAIGE, individually and on behalf of others similarly situated, Plaintiffs,

v.

STATE of California, California Highway Patrol, etc., et al., Defendants.

No. CV94-0083CBMCTX.

Jan. 19, 2001.

PRELIMINARY INJUNCTION

[MARSHALL](#), District J.

*1 The matter before the Court, the Honorable Consuelo B. Marshall, United States District Judge, presiding, is the motion by plaintiffs Jeff D. Paige, *et al.*, for a preliminary injunction. Based on the papers and argument of Counsel, this Court hereby GRANTS the motion and issues the following Order:

I. JURISDICTION

This Court has jurisdiction pursuant to [42 U.S.C. § 2000e](#) *et seq.* and [28 U.S.C. § 1331](#).

II. PRELIMINARY INJUNCTION

Consistent with this Court's Order of January 19, 2001 granting Plaintiffs' Motion for Preliminary Injunction, IT IS ORDERED THAT pending further proceedings in this matter, Defendants State of California; California Highway Patrol ("CHP"); Dwight Helmick in his official capacity as Commissioner of the CHP; their agents and employees (collectively "Defendants") and all other persons acting in concert with them who receive actual notice of this Order by personal service or otherwise, are hereby ORDERED, ENJOINED, AND RESTRAINED as follows:

1. Defendants are ENJOINED AND RESTRAINED from undertaking or making any promotions or lateral hires to the ranks of Sergeant, Lieutenant, Captain, Assistant Chief or Deputy Chief, except as otherwise provided in paragraph 4, until Defendants' full

compliance with the remainder of this Order has been shown to the satisfaction of the Court or its designee.

2. Defendants are hereby ordered to develop and submit for Court approval, within ninety days of the date of this Order, an interim prospective remedial plan applicable to the plaintiff class, including accelerated goals and timetables for minority promotion designed to increase the number of minorities in the CHP's sworn supervisory ranks to labor force parity as measured by U.S. census code 414 within the shortest possible time. Defendants shall implement the interim plan immediately upon notice of Court approval. Pending compliance with paragraph 6 below, vacancy-fill goals for the ranks of Sergeant through Lieutenant shall be set at a minimum of 200% of current availability at the rank of state traffic officer and vacancy-fill goals for the ranks of Captain through Deputy Chief shall be set at a minimum of 100% of current labor market availability as measured by census code 414.

Once full compliance with paragraph 6 has been shown to the satisfaction of the Court, defendants shall continue to use their best efforts to achieve the vacancy-fill goals set forth above until labor force parity is reached or until further order of this Court.

Nothing herein shall require Defendants to hire or to promote unqualified individuals. Nothing herein shall require Defendants to demote or displace existing employees.

3. Defendants are ordered hereafter to file and serve semi-annual plans and to obtain Court approval of such plans until labor force parity is reached or until further order of this Court.

4. The Court has found that the CHP's promotional policies, practices, and procedures have an adverse impact on the minority class. Accordingly, Defendants are hereby ENJOINED from

*2 (a) Developing, announcing or administering any promotional examinations, or using any promotional selection device, until Defendants' full compliance with paragraph 6 of this Order has been shown to the

satisfaction of the Court or its designee;

(b) Making any promotional appointments from existing candidates lists, except that promotions may be made from existing lists pending development of validated selection devices in accordance with paragraph 6 of this Order, so long as such promotions meet the vacancy fill goals set forth in paragraph 2.

5. A monitor shall be designated by the Court to oversee and insure Defendants' compliance with the terms of this injunction. The parties are ordered to meet and confer and to submit to the Court, within fifteen days of the date of this Order, a list or lists of individuals with appropriate qualifications who have confirmed their willingness to serve as monitor. Qualifications shall include police selection procedure development and validation, alternate selection procedure evaluation and adverse impact analysis. All fees and costs of the monitor will be paid monthly by Defendants.

6. Defendants are hereby ordered to validate, in conformance with the Uniform Guidelines, all employee selection procedures used by the CHP for any sworn rank (from Sergeant through Deputy Chief) prior to their use. The validation process shall include the evaluation of alternative job-related selection devices where necessary to minimize adverse impact on protected groups. Defendants are further ordered to demonstrate to the satisfaction of the Court or its designee that all employee selection devices used in making promotional decisions for the CHP's sworn supervisory ranks comply fully with the requirements of Title VII.

(a) For purposes of this Order, to comply with Title VII means that the selection device shall be validated according to the Uniform Guidelines and federal law. No later than 90 days prior to the announcement of any promotional examination, Defendants shall provide to the Court-appointed monitor specific and detailed information sufficient to enable the monitor to advise the Court and counsel to the class whether the examination is job-related and valid under the Uniform Guidelines and applicable federal law.

(b) The Job Analysis to be used shall address the requirements of § 14C of the Uniform Guidelines.

(c) Each step of the selection process must be stan-

dard-scored to ensure that intended weights are the same as effective weights.

(d) When more than one oral panel is used, each rater's scale evaluations will be standard-scored to ensure that each rater and each panel will have the same mean and standard deviation.

(e) Raters shall not be permitted to confer regarding the assignment of initial scores. After assigning an initial score, raters will be encouraged to discuss the interview, knowledge, skills and abilities being measured, responses of the candidate and other candidates, reasons for their ratings, and may change their score, if they so choose. Raters will not be required to change any scores.

*3 (f) Lists of proposed oral board members shall be submitted for approval by the monitor. Oral board members shall be trained to evaluate the qualifications to be measured and will use only behaviorally anchored rating scales. Each oral board panel will have a minority subject matter expert.

(g) Reliability will be calculated between oral board members and for each panel as a whole.

(h) Rater bias will be analyzed for each oral board member.

(i) Only one year of experience will be used as a time in grade requirement until a time in grade evaluation has been validated and approved by the Court or its designee.

(j) Records shall be maintained by sex, race and ethnic status and calculations shall be performed at least annually and at the conclusion of any step in any selection process to evaluate adverse impact by sex, race and ethnic status, including total minorities. These records will be maintained in machine-readable form in a format requested by the monitor and provided to the monitor and to counsel for the class.

(k) Weights for the various components in the selection process shall be derived from independent opinions of subject matter experts employed by Defendants, who are appointed by the monitor.

(l) Within the range of job-related weights established by the subject matter experts, a set of weights will be used that best minimizes adverse impact on minorities and that effectuates the vacancy fill goals set forth in paragraph 2 above. Therefore, weights will not be announced prior to the selection process.

(m) Cut-off scores, if used, will be set by a process that best minimizes adverse impact on minorities and that effectuates the vacancy fill goals set forth in paragraph 2 above and is job related.

(n) Promotions shall be made using a "banding" procedure to effectuate the vacancy fill goals set forth in paragraph 2 above. Defendants shall treat scores that fall within a statistically derived "band" as substantially equivalent for purposes of the knowledge, skills and abilities measured by the examination. *See [Officers for Justice v. Civil Service Commission, 979 F.2d 721, 722 \(9th Cir.1992\)](#).*

(o) The job analysis and selection plan will be reviewed and approved by the monitor before test development begins.

(p) All selection components will be developed from the approved job analysis and selection plan.

(q) All selection procedures along with the validation report will be submitted to and approved by the monitor prior to administration of any promotional examination.

(r) As part of the validation process, defendants shall investigate suitable alternative selection procedures and alternative methods of using the selection procedures which have as little adverse impact as possible, to determine the appropriateness of using or validating them in accord with the Uniform Guidelines.

(s) Defendants shall maintain current lists of all applicants for promotion to each supervisory rank. These lists shall include the individuals' names, social security numbers, and identification of step within the selection process in machine-readable format as requested by the monitor. Defendants shall provide such lists to the monitor and to class counsel upon request.

*4 (t) Defendants shall, on a quarterly basis, file with

the Court and the monitor, and serve counsel for the class, the following summary information in machine readable format.

(i) the number of individuals in each rank by race/ethnic status and sex;

(ii) the number of individuals promoted to each rank by race/ethnic status and sex.

(iii) Within fifteen days of the date this injunction is served on counsel for the parties, Defendants shall serve a copy on all class members by first class mail to their current or last known address and publish the injunction by COMM-NET. Defendants shall also notify all sworn personnel that this injunction has issued and that new validated selection procedures for promotion shall be developed and used in accordance with the injunction.

(iv) Plaintiffs shall not be required to post a bond.

IT IS SO ORDERED.

C.D.Cal.,2001.

Paige v. State of California

Not Reported in F.Supp.2d, 2001 WL 128439

(C.D.Cal.)

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