

1983 WL 532
United States District Court; S.D. Florida.

United States of America, Plaintiff

v.

City of Miami et al., Defendants and International Association of Firefighters, Local 587, ^{Defendant}/_{Intervenor}.

Civil Action No. 75 3096 Civ JWK | June 1, 1983

Opinion

KEHOE, D.J.

*1 Pursuant to the Mandate issued by the United States Court of Appeals, Fifth Circuit, this cause was remanded for further proceedings in accordance with the *en banc* decision of the appellate court. See *United States v. City of Miami* [27 EPD P 32,328], 664 F.2d 435 (5th Cir. 1981). Subsequently, a Consent Judgment and dismissal was entered into between the United States, the City of Miami, and the Fraternal Order of Police, City of Miami Lodge No. 20. See Consent Order issued April 4, 1983 (Docket No. 306).¹ Also, by separate order, a claim seeking injunctive relief by the City of Miami Sanitation Workers was disposed of on the merits. See Order of April 4, 1983 denying motion for Preliminary Injunction (Docket No. 307). As a result of these orders, only one substantive matter remains for determination by the Court, the issues raised by the Second Amended Cross-Complaint in intervention filed by the International Association of Firefighters, Local 587.

These remaining issues came on for trial before the Court on February 28, March 1 and 2, 1983.² After having heard all testimony and argument of counsel, having received exhibits and considered post-trial memoranda on the issues raised, the Court does now enter its Findings of Fact and publishes its Conclusions of Law.³

Findings of Fact

1. On December 29, 1975, the United States filed the complaint in this case alleging, *inter alia*, that the City of Miami and its officials discriminated in its employment practices against blacks, Latins and women in violation of federal civil rights laws.
2. The City of Miami Civil Service Rules and Regulations which were in effect at the time this suit was filed, were embodied in Ordinance Number 6945, and provided a procedure for promotion referred to informally as the "Rule of One" which required the City of Miami to select persons in rank order on the eligible register when it made promotions within its various City departments. Accordingly, promotions were normally awarded to the person having the highest rank on the promotional register, following a promotional test.
- *2 3. On March 29, 1977, a Consent Decree, agreed to by the plaintiff United States and the defendant City was entered by Judge Joe Eaton in this case.
4. The Consent Decree contains the following provisions pertaining to the issues of this cause:

* * *

The defendant City of Miami, its officials, agents, employees, and all persons in active concert or participation with them in the performance of City functions (hereinafter collectively referred to as the City) are permanently enjoined and restrained from engaging in any act or practice which has the purpose or effect of unlawfully discriminating against any employee of, or any applicant or potential applicant for employment with, the City of Miami because of such individual's race, color, sex or national origin. Specifically, the City shall not fail or refuse to hire, promote, upgrade, train or assign any individual,

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discharge any individual or otherwise discriminate against any individual as an employee or applicant for employment with respect to compensation, terms, conditions or privileges of employment because of race, color, sex or national origin.

* * *

The City shall continue to pursue an active program to recruit blacks, Latins, and women to become firefighters.

* * *

The City shall not use any written examination for employment or promotion which has an adverse impact on blacks, Latins, or women unless it can be shown to be predictive of job performance, or can otherwise be shown to be job related, in accordance with standards established by the Equal Employment Opportunity Commission. ...

* * *

Subject to the availability of qualified applicants, promotional goals shall be established for minorities, on a department basis having as its yearly goal, until the long term goal has been met for a period of one year, either parity with the Miami City workforce population statistics or the percentage of minorities currently employed in the department, whichever is smaller. Priority opportunity for promotion ... within a particular department shall be provided to qualified persons who have indicated a desire or interest in the promotion, transfer and assignment opportunities created by this decree. Each person responding to this request shall be promoted or transferred pursuant to ... [this decree].
The term "affected class", as used in this decree, shall include the following:

- (a) All incumbent black and Latin employees currently holding positions with the City who were initially assigned to traditionally black or Latin jobs.
- (b) All incumbent women employees currently holding positions with the City who were initially assigned to traditionally female jobs.
- (c) All blacks, Latins and women identified as having been discriminatorily denied employment opportunities (including promotion and terms and conditions of employment), or terminated since March 24, 1972.

* * *

A member of the affected class shall be given the initial opportunity to fill any vacancy in the City where the person is the senior applicant who meets, or could reasonably be expected to meet after an initial probationary period, the minimum qualifications for the position unless an applicant not a member of the affected class has demonstrably superior qualifications.

* * *

***3** The Court retains jurisdiction of this action for such further orders as may be appropriate.

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* * *

5. The Consent Decree made no finding of discrimination based on race or national origin in the Fire Department.
6. The International Association of Firefighters, AFL-CIO Local 587 is the exclusive collective bargaining representative for firefighters, fire lieutenants, fire captains and chief fire officers in the City of Miami's Department of Fire, Rescue, and Inspection Services. The collective bargaining agreement in effect at that time between the City and Firefighters' Local 587 contained a prevailing benefits clause which expressly stated that "nothing in this Article shall prevent the City from implementing the terms of the Consent Decree...."
7. On or about July 26, 1978, Firefighters Local 587, acting through its president and its attorney signed the Consent Decree in this matter, and thereby accepted the Consent Decree in resolution of the issues raised by the United States in this suit.
8. On or about April 17, 1978, the Justice Department wrote to the City Manager and City Mayor concerning the first year of operation of the Consent Decree. That letter, stated, *inter alia*:

... The City's Civil Service Rules contain provisions restricting appointments from open competitive registers to the top name on such registers. These are requirements that have worked over a period of many years to exclude minorities and women from the City's workforce. It appears that these provisions continue to have adverse effects with respect to the City's classified service. ... We would suggest that the City of Miami review and consider revision of its procedures and Civil Service Rules in order to assure that appointments and promotions in the City's classified service will meet the goals established under Section 5 of the Consent Decree.
9. On or about June 1, 1978 the City proposed to amend its civil service rules in response to the Justice Department's letter. On June 13, 1978, the Civil Service Board voted to adopt Ordinance Number 8977.
10. A new collective bargaining agreement between the City and Firefighters Local 587 was executed on November 14, 1978, covering the period from October 1, 1978 through September 30, 1981. Like its predecessors, the prevailing benefits Article provided that "nothing in this Article shall prevent the City from implementing the terms of the Consent Decree." The present collective bargaining agreement, covering the period from October 1, 1981 through September, 1983 contains the same provision and the same language.
11. On July 27, 1979, after full notice and hearing, and pursuant to its usual procedures, the City Commission of the City of Miami adopted Ordinance 8977, and is entitled "City of Miami Civil Service Rules and Regulations." Ordinance 8977 became effective on August 23, 1979 and superseded the civil service regulations embodied in the old Ordinance No. 6945.
12. Ordinance No. 8977 provides for the certification of five persons to be considered by the appointing official, rather than one. In addition, the Ordinance allows the City, where necessary or appropriate to comply with the Consent Decree entered in this case, to certify up to three lower ranking, minority and female applicants who have passed the examination, in order to have them considered for appointment by the appointing official. Under the Ordinance the selection of candidates for promotions is left to the appointing official. In other words, this ordinance replaces the old "rule of one" with a "rule of eight."
- *4 13. The provision of the current collective bargaining agreement between Firefighters Local 587 and the City specifies that the "filling of all vacancies shall be in accordance with the Civil Service Rules and Regulations."
14. Ordinance 8977 has no effect upon which candidates pass a test, and those who fail and are not considered further for promotion. Ordinance 8977 expands the list of eligible candidates from which the selecting official may make the promotions, in a manner which allows consideration of qualified black, Latin and female candidates, as well as white, Anglo and male candidates. In fact, all of the persons on the eligible rosters are qualified for the promotion for which they are eligible.
15. It is the policy of the City of Miami to hire and promote only those persons who are qualified for a particular position. Neither the Consent Decree issued earlier in this cause nor Ordinance 8977 changed this policy.
16. On April 20, 1983 the City issued its official notice regarding promotions in the Fire Department. As a result of these

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promotions one Anglo male was promoted to Chief Fire Officer; two Anglo males, two Latin males and one Black male were promoted to Fire Captain; five Anglo males, four Latin Males and two Black males were promoted to Fire Lieutenant. In making these promotions the City used the procedure for expanding the list of eligible candidates authorized by Ordinance No. 8977.

17. Had the City followed the old procedure embodied in Ordinance No. 6945 and promoted strictly in rank order, the results would have been markedly different. The Chief Fire Officer, all five Captains and ten of the eleven Lieutenants would have been Anglo Males. Only one Hispanic would have been promoted to Lieutenant. No Blacks would have been promoted.

18. While this cause was pending, there was a related action filed in the state court regarding these proceedings. The firefighters Local 587 filed an action in the state court pursuant to state law, seeking to enjoin the City from enacting Ordinance No. 8977 as violating certain provisions of local law. The state courts action was subsequently dismissed.

Conclusions of Law

1. This Court has jurisdiction over the claims asserted by the International Association of Firefighters, AFL-CIO Local 587, since these claims involve the interpretation and enforcement of the Consent Decree entered by this Court on March 29, 1977 and upheld by the United States Court of Appeals. *United States v. City of Miami*, [27 EPD P 32,328] 664 F.2d 435 (5th Cir. *en banc* 1981). The Court also has pendent jurisdiction over the remaining state claims raised by the firefighters.

2. It is the considered judgment of the Court that resolution of a single issue is dispositive of all issues before the Court. That is, that Ordinance No. 8977 is a valid civil service ordinance of the City of Miami and that it was enacted pursuant to the Consent Decree entered in this cause and is fully consistent with the provisions of the Consent Decree.

*5 3. The firefighters have signed the Consent Decree and they are bound by its terms. They cannot now be heard to complain about the procedures established by Ordinance 8977 as long as those procedures are authorized by the Consent Decree. It is the determination of the Court that the City is computing its promotional goals properly and in the manner called for in the Consent Decree. The Court rejects the firefighters' contentions to the contrary.

4. The firefighters take an unduly restrictive view of the terms of the Consent Decree. The City is not required to prove that adoption of Ordinance No. 8977 and the so-called "rule of eight" is in conformity with the Consent Decree. The firefighters have the burden of establishing a violation of the Consent Decree. They have not satisfied the Court that any violation of the Consent Decree has occurred. Quite the opposite, it appears that the City is taking the appropriate steps to rectify the effects of past discrimination against minorities with the least adverse impact upon Anglo Whites. The net result of the "rule of eight" is to increase the flexibility of the City to promote *qualified* individuals while not excluding *any* particular group from the promotional process. The Court endorses this approach and finds that it falls well within the ambit of the Consent Decree.

5. Because the promotional goals and procedures authorized by Ordinance No. 8977 and implemented by the City in its Official Notice effective April 20, 1983 was in conformity with the provisions of the Consent Decree, the City is entitled to a final judgment in its favor on the merits. Therefore, on the basis of the foregoing conclusions of law, the Court will issue by separate order:

- a. A declaratory judgment declaring that the City of Miami is complying with the Consent Decree in all respects;
- b. a final judgment, denying on the merits the International Association of Firefighters AFL-CIO Local 587's claim for a permanent injunction against the implementation of Ordinance No. 8977; and
- c. an order denying the International Association of Firefighters AFL-CIO Local 587's post-trial motion for preliminary injunction seeking to enjoin the City from making final the promotions listed on the Official Notice of April 20, 1983.

Declaratory and Final Judgment

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This action came on for trial before the Court, the undersigned judge presiding, and the issues having been duly heard and a decision having been duly rendered by the Court's Order Containing Findings of Fact and Conclusions of Law issued this date, it is therefore

Ordered and Adjudged as follows:

- a) That the promotional procedures implemented by the City of Miami's Ordinance No. 8977 is in compliance with the Consent Decree previously issued in this cause and that the promotions designated in the City's Official Notice of April 20, 1983 do not violate any of the provisions of the Consent Decree;
- b) that the claim for permanent injunction made by the International Association of Firefighters AFL-CIO Local 587 is without merit, that the action be dismissed with prejudice, and that each party shall bear its own costs of action; and
- *6 c) that the post-trial motion filed by the International Association of Firefighters, AFL-CIO Local 587 is Denied as moot, a final judgment on the merits having been issued.

Parallel Citations

32 Empl. Prac. Dec. P 33,878

Footnotes

- ¹ This Consent Order had the additional effect of resolving all issues raised in the companion case of *Fraternal Order of Police v. City of Miami*, Case No. 79-2183-Civ-JWK. Furthermore, pursuant to the mandate of the United States Court of Appeals this Court dismissed the Miami Police Benevolent Association from this action. See docket no. 239.
- ² While this decision by the Court was pending, the Firefighters Local 587 filed a motion for preliminary injunction, a motion to take additional evidence and other relief and a motion for emergency hearing. The Court held a hearing on May 4 and 5 at which the Firefighters were permitted to supplement the record with additional evidence concerning recent promotions of firefighters made by the City. The Court reserved ruling on the motion for preliminary injunction pending the release of the final order. The Court has considered this additional evidence in reaching its overall determination on the merits and has made findings in accordance therewith.
- ³ To the extent that any of the findings of fact constitute conclusions of law, they are adopted as such. Conversely, to the extent that any of the Court's conclusions of law are found to be findings of fact, they are so adopted.