

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ARTHUR L. LEWIS, JR.; et al.,)	
)	No. 98 C 5596
Plaintiffs,)	
)	Judge Joan B. Gottschall
v.)	
)	
CITY OF CHICAGO,)	
)	
Defendant.)	

~~PROPOSED~~ INJUNCTIVE ORDER OF RELIEF

On March 22, 2005 the Court entered a judgment of liability against defendant, City of Chicago ("the City"), having found that the manner in which the City hired firefighters based on the 1995 written Firefighters Examination discriminated against African Americans. The court subsequently joined Chicago Firefighters Union Local #2 ("the Union") and the Firemen's Annuity and Benefit Fund of Chicago as non-aligned parties for the limited purpose of granting relief pertaining to seniority and pensions. On March 20, 2007, the Court issued a memorandum opinion and order concerning the subject of remedies. The terms of both of these earlier memorandum opinions are incorporated herein. Resolution of the claims in this case now requires specification and implementation of the remedial relief to be provided to plaintiffs for the City's violation of Title VII.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT the City provide the relief set forth below, in accordance with the terms set forth below:

A. Rightful Place Hiring

1. Eligibility. Within ten days after the entry of this Order, a database shall be created containing the names of all members of the class who either have not yet advanced to subsequent steps in the selection process that follow the 1995 Test or, having advanced, have not yet been offered a position at the Quinn Fire Academy and have not been disqualified at any subsequent step of pre-employment screening (i.e., by failing the background check, the physical abilities test, the drug screen or the medical examination).

2. Lottery. Within 20 days after the entry of this Order, the names entered into the database (referred to in paragraph A1, above) shall be placed on an eligibility list in random order.

3. Offers to Class Members to Advance to the Next Steps of the Hiring Process. Within 30 days after entry of this Order, the City shall extend offers to class members to advance to the remaining steps of the entry-level firefighter hiring process (consisting of the physical abilities test, background investigation, drug screen and medical examination) – beginning with the first name on the randomized list created by the lottery process (referred to in paragraph A2 above) and thereafter proceeding in rank order down the list. These offers shall be made by first-class certified mail. The City shall continue extending offers to class members to advance to the next steps of the hiring process until there exists a pool of at least 132 class members who have undergone and passed all steps of the City's pre-employment screening for firefighters, providing that there are at least 132 class members who are willing to undergo pre-employment screening and who have passed all steps of the pre-employment screening. All pre-employment screening of class members shall be completed within 180 days after entry of this Order.

4. Offers of Employment. Within 190 days after entry of this Order, the first 132 class members to undergo the background investigation, physical abilities test, drug screen and medical examination and to pass all of them shall be offered employment by the City as Chicago Fire Department ("CFD") candidate firefighters at the Quinn Fire Academy ("the Academy"). The City shall continue making offers of employment to class members pursuant to this Order until 132 class members have accepted such offers and entered the Academy.

5. Timing of Entry into the Academy. All class members hired pursuant to paragraph A4 of this Order shall enter the Academy within 24 months of the entry of this Order.

6. Use of the 1996 Eligibility List. The 1996 Eligibility list will be used solely for the purpose of the screening and processing of class members in order to hire the shortfall of 132 class members as firefighters, and other than hiring of class members pursuant to this Order, there shall be no further hiring from the 1996 Eligibility List.

B. Retroactive Seniority

1. Constructive Seniority Date. Any class member hired pursuant to the terms of this Order shall be entitled, after completion of the contractual nine-month probationary period of employment, to retroactive seniority credit dating back to December 4, 1998 for all purposes for which seniority is considered except

- (a) sections 9.3(B)(1) and (2) of the Collective Bargaining Agreement and
- (b) the seven or more years of service required of a fireman to be eligible for an occupational disease disability benefit pursuant to 40 ILCS 5/6-151.1 of the Illinois Pension Code ("Code").

For purposes of section 9.3(B)(1) and (2) and the seven-year service requirement in 40 ILCS 5/6-151.1, a class member's seniority date shall be the actual date each such class member enters the

Quinn Fire Academy to begin firefighter training.

C. Back Pay

1. Backpay will be awarded with respect to 132.4 shortfall positions, which would have been filled by African Americans but for the manner in which the City hired firefighters based on the 1995 Firefighters Examination, which discriminated against African Americans.

Backpay will be computed as follows:

a. Backpay period. The backpay period for each shortfall position shall begin on the date of expected hire and end on the date of actual hire for each of the shortfall positions. For purposes of backpay computations only, the parties shall assume the hire dates for class members set forth in this table:

Date of Expected Hire	Number of Class Members Expected to Have Been Hired on that Date
5/16/96	21.3
10/1/96	10.5
03/04/97	12.6
10/01/97	12.2
02/02/98	5.8
02/16/99	10.0
12/1/99	13.8
07/17/00	19.0
2/20/01	13.4
10/16/01	11.0
11/1/02	2.8
TOTAL	132.4

b. Attrition. For each year or partial year between the date of expected hire and date of actual hire set forth in the above table, the number of class members for whom

backpay is computed shall be reduced by the following factors reflecting actual CFD attrition experience: (a) for the calendar year containing the date of expected hire, 0.0%; (b) for the first calendar year following that year, 1.7%; (c) for each calendar year or partial year after that, 0.4%.

c. Lost CFD Wages and Non-Pension Fringe Benefits. Lost compensation (wages and benefits) for purposes of backpay shall be equal to the Chicago Fire Department ("CFD") wages (including availability and average overtime pay) and non-pension fringe benefits that each shortfall hire would have earned for services as a Chicago Firefighter from the date of expected hire until the date of actual hire. These computations shall assume that class members remains at the rank of Firefighter throughout the period for which backpay is computed.

d. Mitigating earnings from interim employment. Backpay as provided in paragraph 3 shall be offset by: (a) presumed interim wages earned, which shall be calculated using wage rates for each year equal to the average of "Level 5" and "Level 6" wages as reported in the U.S. Department of Labor's National Compensation Survey for the category "Blue Collar Workers" in the Chicago-Gary-Kenosha Consolidated Metropolitan Statistical Area for the relevant years, plus assumed overtime earnings; and (b) presumed interim benefits received, at the rate computed by the U.S. Department of Labor's Annual Compensation Survey for "Blue Collar" workers in the Civilian Labor Force nationwide; and (c) adjusted for the probability of unemployment, using the Civilian Labor Force overall unemployment rate for the Chicago Metropolitan area for each year within the backpay period, as reported by the U.S. Department of Labor, adjusted by a factor of 1.4 to reflect greater relative unemployment among African

Americans.

d. Backpay before prejudgment interest. The backpay total owed before prejudgment interest, shall be the difference between total lost CFD compensation (paragraph 3 above) and mitigating earnings from interim employment (paragraph 4 above).

e. Prejudgment interest. Prejudgment interest shall be awarded, with respect to backpay for each of the 132 shortfall positions using the average annual nominal prime rate of interest over the period from the expected date of hire to the actual date of hire. Prejudgment interest shall be computed daily and compounded annually.

2. Funding of Pension and Any Other Applicable Benefits Plans and Programs Back to December 4, 1998.

a. Amounts Owed. Payment shall be made by the City to the Fireman's Annuity & Benefit Fund of Chicago ("the Fund") to provide each class member hired and his or her family with the same level of pension/benefits funding as if the class member had been hired on December 4, 1998. The amounts owed to the Fund shall be calculated in accordance with the applicable provisions of Article 6 of the Illinois Pension Code (40 ILCS 5/6-101 *et seq.*).

b. Principal and Interest. The amounts owed to the Fund shall include both *principal* (i.e., contributions that would have been owed to the Fund in the form of employer and employee contributions had class members hired pursuant to paragraph C1 of this Order been hired on December 4, 1998) and *interest* (i.e., investment returns that would have been earned on those contributions in the interim), so that the actuarial standing of the Fund is not adversely affected by this judgment.

c. Sources of Payment. Amounts owed to the Fund reflecting principal that

would have been paid to the Fund in the form of employee contributions if class members had been hired on December 4, 1998 shall be paid to the Fund by the City; the City will deduct the amounts necessary to cover these payments from the backpay obligation incurred by it pursuant to paragraph C1 of this Order. Amounts due to the Fund reflecting principal that would have been paid to the Fund in the form of employer contributions, as well as all interest due on both employer and employee contributions, shall be paid by the City in addition to the backpay amount owed by the City pursuant to paragraph C1 of this Order.

d. Calculation of Interest Owed. Interest due on employee contribution amounts shall be calculated by the Fund at the Fund's average compounded rate of investment return for the period December 1, 1998 through the date of payment of the contributions. Interest due on employer contribution amounts shall be calculated by the Fund at the Fund's average compounded rate of investment return for the period from January 1, 2001 through the date of payment.

e. Timing of Payments Due to the Fund. The City shall promptly notify the Fund in writing of the hiring of any class member pursuant to this Order. Within ninety (90) days from the date the Fund has been notified in writing that a class member has been hired by the City as a member of the CFD pursuant to the terms of this Order, the Fund will issue a written notice to the City and the hired class member, through their respective counsel of record, identifying the total amount of employer and employee contributions, plus applicable interest, due to the Fund and will provide each with the basis of the Fund's calculation. Within forty-five (45) days after that written notification has been received by class counsel and the City, the City shall remit to the Fund both the employee contribution amounts due and interest owed on those

amounts. The corresponding employer contributions due to the Fund will be paid and calculated in the usual and customary manner as specifically set forth under 40 ILCS 5/6-165(a) of the Code (with the exception that the City's payment shall also include all interest due on employer contribution amounts as set forth in paragraph C2d, above).

3. Distribution of Back Pay Amounts to the Class. Within 10 days after the last class member has been hired pursuant to paragraph A4 of this Order, the City shall submit two lists to the Court and plaintiffs' counsel, one with the names all class members hired pursuant to paragraph A4 of this Order, and a second ("the Backpay Eligibility List") consisting of the names of all remaining class members on the randomized list created pursuant to paragraph A1 and A2 of this order who were not, subsequent to the creation of that randomized list, disqualified by pre-employment screening conducted pursuant to paragraph A3 of this Order (i.e., by failing the background check, the physical abilities test, the drug screen or the medical examination). Plaintiffs' counsel shall have 30 days to review the lists and file objection(s) to them, if any. Thereafter, the Court shall promptly resolve objections, if any, and approve the lists. Within 10 days after approval of the lists by the Court, pursuant to paragraph C4 of this Order, the City shall provide claims forms and claims-form information to each class member on the Backpay Eligibility List. Within 30-60 days of the deadline for the filing of these claims forms by class members, the City shall distribute funds as follows:

a. Payments to Retroactively Fund the Employee-Portion of Pension (and/or similar) Contributions Owed by Class Members Hired Pursuant to Paragraph A4 of this Order. The City shall pay amounts sufficient to relieve persons hired pursuant to paragraph A4 of this Order of the burden of making out-of-pocket payments to retroactively fund their employec-

portion of pension contributions (and/or other amounts due as payments from them to retroactively fund other benefit policies, programs or plans).

b. Distribution of Remaining Funds to Eligible Class Members Who Do Not Receive Job Offers. The remainder of funds owed pursuant to paragraph C1 of this Order shall be distributed, by first-class certified mail, in equal shares to eligible class members who: (a) do not receive job offers pursuant to paragraph A4 of this Order and (b) have filed a valid claim form pursuant to paragraph C4 of this Order (below).

c. Surplus Funds. If, after distribution of funds pursuant to paragraph C3 (a and b) above, funds remain, these shall be deposited in the Registry of the Court pending determination of their ultimate disposition.

4. Claims Process/Claims Forms. Within 30 days of the last hire from the plaintiff class, the City shall send a claim form, in a format developed by the parties and approved by the Court, to all class members on the Eligible Backpay List by first class mail. At the same time, the City shall also publish the claims form in the Chicago Tribune and the Chicago Sun-Times and post the claim form on an easily accessible page on the City's website. The City shall bear the cost of all mailing printing and publication and any other associated expenses. Claims forms must be returned by eligible class members to plaintiffs' counsel by first class mail, postmarked by a date to be determined by the Court.

D. Reporting and Monitoring

1. Monitoring During Academy Training. Within 120 days of entry of this Order, an incumbent uniformed member of the CFD acceptable to both the City and the plaintiffs shall be appointed to act as an ombudsman for persons hired pursuant to paragraph A4 of the Order

during their Academy training, with responsibility for addressing the special needs and problems of people entering the Academy as a result of this lawsuit and for reporting to the court, if necessary, on the progress of the shortfall group. If the parties fail to agree on a mutually acceptable person, the City and plaintiffs shall each nominate one person and the court shall select. All costs of such monitoring, including salary for the monitor, shall be borne by the City. Further specifics of the monitoring may be the subject of a supplemental order of the Court.

E. Prejudgment Interest

All monetary relief provided to class members pursuant to this Order shall be awarded with compound prejudgment interest at the prime rate.

F. Postjudgment Interest

All monetary relief provided to class members pursuant to this Order shall be awarded with postjudgment interest.

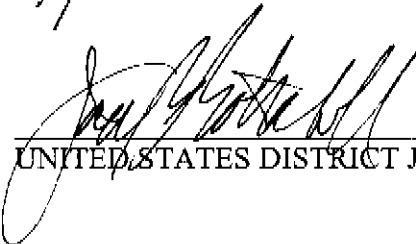
G. Attorney's Fees and Expenses.

As prevailing parties, plaintiffs are entitled to an award of attorney's fees and expenses pursuant to 42 U.S.C. § 1988, including expert fees. 42 U.S.C. § 2000e-5(k). The parties shall attempt to agree upon the amount of an award pursuant to Local Rule 54.3(d) before a fee motion is filed. Plaintiffs shall also be entitled to an award of fee and costs for monitoring and implementation of this Order after its entry.

H. Retention of Jurisdiction

The Court shall retain jurisdiction of this action for purposes of construction, implementation and enforcement of the terms of this Order.

APPROVED and ORDERED this 19th day of April, 2007. 4-19-07


UNITED STATES DISTRICT JUDGE