

WHEREAS, on May 13, 2010, the Court issued an Opinion and Order, holding that the United States “established its pattern-or-practice disparate treatment claim;” and

WHEREAS, on May 28, 2010, the Court entered a Judgment in favor of the United States with respect to the compliance relief requested by the United States, as set forth in this Compliance Injunction.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREEDD that the United States is entitled to the following compliance relief pursuant to 42 U.S.C. § 2000e-5(g):

I. DEFINITIONS

1. As used in this Compliance Injunction (the “Injunction”), the following capitalized terms shall have the following meanings:

(a) “Applicant” refers to any person who has applied for the position of Bridge Painter with the Department of Transportation’s Division of Bridges.

(b) “Bridge Painter” refers to the title and/or position of Bridge Painter (held either Permanently or Provisionally) with the Department of Transportation’s Division of Bridges, as well as any successor job titles for these positions, unless otherwise specified.

(c) “Days” refers to calendar and not business days, unless otherwise specified.

(d) The “Effective Date” refers to the date on which this Injunction is approved by the Court and entered on the docket.

(e) “Employee” refers to any individual who is employed by the Department of Transportation’s Division of Bridges in the position of Bridge Painter.

(f) A “Job Vacancy” refers to any vacancy within the Department of Transportation’s Division of Bridges for the position of Bridge Painter.

(g) A “Posting” refers to any written or electronic notice or advertisement of a Job Vacancy issued or authorized by the Department of Transportation.

(h) “Provisional Appointment” refers to the appointment of an individual to the position of Bridge Painter provisionally, as set forth in N.Y. Civil Service Law § 65.

(i) The “Term of the Injunction” refers to the three-year period beginning on the Effective Date, except where the Court so-orders that such term to be extended or reduced.

(j) “Union Offices” refer to the following labor organization offices: (1) the Bridge Painters Local 806, 40 West 27th Street 10th Floor, New York, N.Y. 10001; (2) District Council 9 Painters Union, 45 West 14th Street, New York, N.Y. 10011; (3) District Council 9 Apprenticeship and Training Center, 45-15 36th Street, Long Island City, N.Y. 11101 and (4) District Council 9 Painters Union newsletter.

II. INJUNCTIVE RELIEF WITH RESPECT TO THE DEPARTMENT OF TRANSPORTATION’S PROCEDURES FOR HIRING BRIDGE PAINTERS

A. The Procedures for Hiring Bridge Painters Provisionally

2. Defendants may fill Job Vacancies through provisional appointments pursuant to New York Civil Service Law § 65, provided, however, that any such Job Vacancy is filled in accordance with the following procedures:

a. Defendants shall publish a Posting at least thirty (30) days prior to the deadline for the submission of applications for the Job Vacancy and the Posting shall be published for a period of at least thirty (30) days.

b. The Posting shall include, at a minimum, a description of the position, a description of the application process which shall include submission of a resume, the salary for the position, the minimum qualifications necessary for the position, and any other eligibility requirements, including but not limited to a description of proficiency in any skills that applicants will be required to demonstrate. The Posting shall also include a statement that the Department of Transportation is an Equal Opportunity Employer.

- c. Defendants shall, at a minimum, (i) publish the Posting on the Department of Transportation's internet and intranet websites; (ii) arrange for it to appear in *The Chief-Leader*, the weekly newspaper concerning New York City civil service; (iii) provide copies of the Posting to the Union Offices for posting at their offices and/or publication in union newsletters; and (iv) post it at all job sites for bridges owned or operated by the Defendants currently undergoing painting or renovation.
- d. The Department of Transportation will review all applications for the position of Bridge Painter and notify all Applicants who meet the minimum qualifications and are eligible to apply to report for assessments of their climbing skills, cable riggings skills, and knot tying skills. All applicants who demonstrate satisfactory proficiency in climbing, cable riggings and knot tying skills, as described in the Posting, shall be notified to report for an interview. All such skills assessments shall comply with Title VII of the Civil Rights Act of 1964, and information regarding these assessments shall be disclosed to counsel for the United States pursuant to paragraphs 14-15.
- e. All communications and notifications required in this paragraph 4(d) shall be by letter to the address provided by the Applicant on his/her resume, to be followed up by a telephone call where necessary, and include the date, time and location of the skills assessments or interview.
- f. All Applicants who are interviewed after responding to the same Job Vacancy Posting shall be interviewed by the same panel members, unless extraordinary circumstances require the substitution of a member of the interviewing panel. A

representative of the Department of Transportation's Equal Employment Opportunity (EEO) Office shall be present at every such interview.

- g. During the interview, the panel will ask the same prepared questions of all Applicants. Panel members may also ask appropriate, job-related follow-up questions of their own. Each panel member, other than the EEO representative, must separately fill out an interview rating sheet for each Applicant.
- h. At the conclusion of the interviews, the panel will meet to discuss the Applicants interviewed and to make a final decision as to which Applicants are best qualified for the position. The panel will then prepare a list ranking the Applicants in order. Rankings will be based upon an evaluation of the Applicant's qualifications and interview rating.
- i. Offers for the position of Bridge Painter shall be made in order of the Applicant's ranking on the list prepared by the panel; and notices of selection for the position of Bridge Painter shall be made in writing.

B. The Procedures for Hiring Bridge Painters Permanently Through the Administration of Civil Service Examinations

3. Defendants shall open filing for a competitive Civil Service Exam for the title of Bridge Painter (the "Exam"), shall provide to counsel for the United States a copy of the Notice of Exam, and shall (i) publish the Notice of Exam on the Department of Transportation's internet and intranet websites; (ii) arrange for the publication of the Notice of Exam in *The Chief-Leader*, the weekly newspaper concerning New York City civil service; (iii) provide copies of the Notice of Exam to the Union Offices for posting at their offices and/or publication in union newsletters; and (iv) post it at all job sites for bridges owned or operated by the Defendants currently undergoing painting or renovation.

4. Defendants shall complete the administration of the Exam no later than November 1, 2010. At least ninety (90) days prior to the administration of any Exam pursuant to this paragraph, Defendants shall provide counsel to the United States with the Exam. The Exam shall comply with Title VII of the Civil Rights Act of 1964, and information regarding the Exam shall be disclosed to counsel for the United States pursuant to paragraphs 14-15.

5. By December 31, 2010, Defendants shall establish a Civil Service Eligible List based on the results of the Exam.

6. Defendants shall hire from the Civil Service Eligible List, in accordance with New York Civil Service Law § 61, provided, however, that Defendants shall not invoke their discretion under the so-called "One-in-Three" rule, set forth in Civil Service Law § 61(1), to non-select one of the Individual Intervenors. Nor shall Defendants invoke their discretion under the so-called "One-in-Three" rule, set forth in Civil Service Law § 61(1), to deviate from the rank order of the Civil Service Eligible List and non-select any female Applicant on the grounds that a lower-ranked male Applicant has previously served provisionally as a Bridge Painter.

C. The Procedures for Hiring Bridge Painters Permanently in the Event of Its Reclassification to a Non-Competitive Position

7. Nothing contained in this Injunction shall be construed as precluding, impairing or in any way limiting Defendants from seeking to reclassify the Bridge Painter position to the non-competitive class in accordance with New York State Civil Service Law.

8. In the event that Defendants apply to the New York State Civil Service Commission to reclassify the Bridge Painter title from the competitive to the non-competitive class and such application is granted, Defendants shall provide to counsel to the United States, within sixty (60) days of their receipt of such reclassification decision, a detailed plan for selecting non-competitive Bridge Painters for appointment.

9. Such a plan shall include, at a minimum, (i) a timetable for the hiring process, (ii) a description of the minimum qualifications for the position, and (iii) an explanation of the criteria to be used to evaluate applicants and the method of evaluation. Such a plan shall comply with Title VII of the Civil Rights Act of 1964, and information regarding this plan shall be disclosed to counsel for the United States pursuant to paragraph 8.

10. In the event that Defendants determine that a female Provisional Bridge Painter has failed a non-competitive examination for the Bridge Painter position, Defendants shall provide to the counsel for the United States, within ten (10) days of reaching such a determination, a copy of the examination report for that female Provisional Bridge Painter, as well as all other records relied upon by Defendants to reach their conclusion.

III. GENERAL INJUNCTIVE RELIEF

11. Defendants, their officials, agents, employees, and successors, shall not engage in any act or practice that violates Title VII of the Civil Rights Act of 1964 in connection with the recruitment, selection, and employment of women for the position of Bridge Painter.

12. Defendants, their officials, agents, employees, and successors, shall not retaliate against any person because that person has filed a complaint with the Equal Employment Opportunity Commission or has participated or cooperated with counsel for the United States in the investigation and/or litigation of this case or the implementation of this Injunction.

13. Except as noted below, during the Term of the Injunction, Defendants shall not hire, employ, retain or otherwise contract with (an) independent contractor(s) to perform bridge maintenance painting and related tasks or duties that have traditionally been, and in the ordinary course would be otherwise, performed by Employees. This paragraph does not apply to the performance of bridge painting functions not currently or traditionally performed by Employees including, but not limited to, cyclical bridge painting on the major New York City bridges and

related tasks or duties that are currently or have traditionally been, and in the ordinary course would be otherwise, performed by persons employed by bridge painting firms with which the Department of Transportation contracts. Nothing herein shall be deemed to require Defendants to increase the number of Employees that it employs, either provisionally or permanently, as of the Effective Date.

IV. MONITORING AND OVERSIGHT

A. Reporting

14. Defendants shall provide the United States with three (3) reports, each covering a 12-month reporting period. The first reporting period will begin on the first day of the month following the Effective Date. The information and documents contained in the reports will be subject to an appropriate stipulation of confidentiality, to be agreed upon by the parties and so ordered by the Court. The first reporting period will begin on the first day of the month following the Effective Date. These reports will be due within thirty (30) days from the closing of the respective reporting period. Defendants will provide the United States with the third and final report thirty (30) days before the end of the third reporting period and will cover the period from the closing date of the second report until ten (10) business days prior to the issuance of that report. For each of these three reports, Defendants will provide the United States with the following information and documents relating to the reporting period in question:

- a. A list of all Applicants for the position of Bridge Painter from the Exam or any list resulting from any open competitive civil service exam administered during the reporting period, including (i) names; (ii) genders (based upon self-identification); (iii) the date of hire, if applicable; and (iv) ranking on the civil service eligible list.

- b. To the extent any individual receives a Provisional or Non-competitive Appointment during the reporting period: (i) a list of all Applicants, including name and gender (based upon self-identification); (ii) the disposition of each application (*i.e.*, appointed or not appointed); (iii) for each applicant not appointed an indication of the reason for non-appointment (*e.g.*, failed to satisfy minimum qualifications, failed drug screening or background investigation, failed to demonstrate satisfactory proficiency on a skills test, or is a viable candidate but has not yet been reached on rank ordered list). At the United States' request, Defendants will provide the complete application packages for any Applicant, including all written materials submitted by the Applicant, the rating sheet for the skills assessments, the list of questions asked at the interview, the interview rating sheets, and notes taken by the interview panel.
- c. To the extent any individual receives a Permanent Appointment pursuant to a non-competitive examination in accordance with the procedures set forth in Paragraphs 7 through 10 above, (i) a list of all other Applicants who took the examination, including name and gender (based upon self-identification); and (ii) the examination reports for all Applicants. At the United States' request, Defendants also will provide the complete application packages for each Applicant, including all written materials submitted by the Applicant, the list of questions asked at the interview, the interview rating sheets, and notes taken by the interview panel.
- d. For each Posting during the reporting period, (i) the date of such Posting; (ii) a copy of such Posting; (iii) the manner of such Posting; (iv) the location of such Posting; and (v) the duration of such Posting.

- e. All complaints of which the Department of Transportation is aware filed by Bridge Painters or Applicants, either with the Department of Transportation's Equal Employment Opportunity office or any City, state or federal entity, alleging discrimination on the basis of sex, and all reports of investigation or findings regarding those complaints.

15. To the extent that Defendants establish a Civil Service Eligible List and then invoke their discretion under Civil Service Law § 61(1) to hire individuals from the Civil Service Eligible List out of rank order, Defendants shall provide within ten (10) days the following information: (i) the names and genders (based upon self-identification) of all such persons hired; and (ii) the names and genders (based upon self-identification) of all persons who were ranked higher on the Civil Service Eligible List than the individual selected, but who were not hired for the position of Bridge Painter. In the event a female was ranked higher on the Civil Service Eligible List than the individual selected and was not hired for the position of Bridge Painter, Defendants will also provide the United States with (iii) all information relied upon in making the hiring decision, and (iv) an affidavit from the relevant decision-maker at the Department of Transportation setting forth the basis for the hiring decision in detail.

B. Record-Keeping

16. During the Term of the Injunction, the Defendants shall retain, in addition to the documents identified in paragraph 14 above, all documents created for purposes of ensuring compliance with this Injunction.

17. During the Term of the Injunction, the United States may request, in writing, access to any other documents identified or not identified in this Injunction that the United States deems necessary to assess Defendants' compliance with the terms of this Injunction.

C. Review by the United States

18. Within thirty (30) days of receiving the reports described in paragraph 14 above, counsel for the United States shall notify counsel for Defendants in writing of any compliance issues or concerns they have. The parties shall meet at a mutually convenient time as soon as practicable to discuss the issues and/or concerns raised, if any, and any other related issues. The meeting shall be scheduled at a mutually convenient time and place.

19. Should the United States, at any stage of the development or administration of Defendants' selection procedures, determine that the selection procedures do not comply with this Injunction, the United States shall promptly notify Defendants in writing. Thereafter, the parties shall meet within thirty (30) days to discuss the United States' objection(s) and any alternative selection procedures. If the parties fail to reach agreement on how to resolve the United States' objection within sixty (60) days of the United States' written notice, either party to this Injunction may move the Court for resolution. If an objection to Defendants' selection procedures is made by the United States, no person shall be certified for appointment from any affected eligibility list pending resolution of the objection by the Court or written agreement of the parties.

20. During the term of this Decree, in connection with each administration of Defendants' selection procedures for Bridge Painter, Defendants shall:

- a. At least sixty (60) days prior to the issuance of a testing announcement for the Bridge Painter position, produce to the United States all applicable job analysis reports, underlying data, and proposed test plans not already provided to the United States.
- b. Upon the close of the application period, provide to the United States: (i) a report on the applications received, in hard copy and, electronic form, including the

name and gender of each applicant and whether or not each applicant met the minimum qualifications for the position in question, and if not, the reason the applicant was disqualified; (ii) a test plan for the selection procedure that will be used; (iii) any validation studies or validation information not previously provided to the United States; and (iv) any additional information that Defendants may have as to whether the selection procedure is likely to have disparate impact and as to whether Defendants' use of the selection procedure is job related and consistent with business necessity.

- c. At least thirty (30) days prior to establishing any passing score for a written examination, Defendants shall provide the United States with the name and gender of each Bridge Painter applicant who participated in the selection procedure, each applicant's total score and each sub-score if applicable, and the proposed passing score(s).

V. FAIRNESS HEARING

21. A Fairness Hearing shall be held before this Court to determine whether the terms of this Injunction are fair, reasonable, equitable and otherwise consistent with federal law. The purpose of the Fairness Hearing is to provide to all individuals who may be affected by the terms of this Injunction notice and an opportunity to present objections prior to the final entry of this Injunction, in accordance with Section 703(n) of Title VII, 42 U.S.C. § 2000e-2(n).

22. No later than fifty-five (55) days prior to the date that the Court sets for the Fairness Hearing, Defendants shall provide a Notice of Fairness Hearing, Instructions for Filing an Objection Prior to the Fairness Hearing, and a form Objection to the Entry of Injunction of Remedial Relief, in the formats to be approved by the Court, as follows:

- a. *via* certified U.S. mail (return receipt requested) to the last known address of each applicant for a provisional Bridge Painter position, and any applicant who registered for Civil Service Exam No. 3027;
- b. to each Bridge Painter in the Department of Transportation's Bridge Painting Section, as an attachment or enclosure to the employee's paycheck.
- c. *via* certified U.S. mail to the Union Offices for posting at their offices and/or publication in union newsletters.

At or before the time notices are provided pursuant to this Paragraph, Defendants shall provide to the United States a list stating the last known address of each individual or entity to whom such notice is being sent.

23. Persons who wish to object to the terms of this Injunction may file objections, in accordance with the requirements and format to be approved by the Court, as follows:

- a. Objections shall state the objector's name, address and telephone number; set forth a description of the objector's basis for objecting; include copies of any documentation supporting the objections; state the name and address of the objector's counsel, if any; and state whether the objector wishes the opportunity to be heard in Court at the Fairness Hearing.
- b. Objections shall be submitted by mailing a copy of any objection to both of the following addresses:

Jeannette Vargas, Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street
New York, NY 10007

Bruce Rosenbaum, Assistant Corporation Counsel
The City of New York Law Department
100 Church Street
New York, NY 10007-2601

c. Objections must be mailed no later than twenty-five (25) days prior to the date that the Court sets for the Fairness Hearing.

24. No later than ten (10) days prior to date of the Fairness Hearing, the United States and Defendants shall file with the Court copies of all objections received by the United States and Defendants. In addition, no later than ten (10) days prior to the Fairness Hearing, the United States shall file its response, if any, to all objections timely received.

VI. MISCELLANEOUS TERMS

25. Nothing in this Injunction shall be construed to relieve Defendants of their obligation to comply with any federal, state or city statute or regulation.


26. Copies of all notices, correspondence, reports or documents required to be provided by one party to the other under this Injunction shall be mailed to:

United States Attorney's Office, Southern District of New York
86 Chambers Street
New York, NY 10007
Attention: Chief, Civil Rights Unit

The City of New York Law Department
100 Church Street
New York, NY 10007-2601
Attention: Chief, Labor and Employment Law Division

SO ORDERED:

Dated: New York, New York
May 28, 2010


WILLIAM H. PAULEY
UNITED STATES DISTRICT JUDGE