

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

CV 77-1881 (JS)

-against-

NASSAU COUNTY, et al.

**ORDER
TO SHOW CAUSE**

Defendants.
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Upon the accompanying 1982 Consent Decree, the Declarations of Lorna B. Goodman, Captain Barbara Green of the Nassau County Police Department and Deputy County Attorney Tatum Fox, and the prior proceedings in this action, and

NOTICE OF THIS ORDER TO SHOW CAUSE HAVING BEEN GIVEN to the Police Benevolent Association of Nassau County (the "PBA"), it is hereby

ORDERED that PBA show cause before the Hon. Joanna Seybert, at the Long Island Courthouse for the Eastern District of New York, 100 Federal Plaza, Central Islip, New York 11722, on August 13, 2004, at 3:00 a.m. (p.m.) why the Court should not grant the application by Nassau County (the "County") -- which is consented to by the U.S. Department of Justice as well as the Superior Officer's Association of Nassau County -- to extend until the earlier of (a) February 16, 2006, or (b) the certification of a new eligible list, the current list of officers eligible for promotion to the rank of sergeant in Nassau County (the "Current List").

IT IS FURTHER ORDERED that, in the event the County's application is not ~~heard~~ ^{decided} by the Court before August 17, 2004, the date on which the Current List will expire, then the Current List is extended to and including the time of the ~~hearing~~ ^{decision} on the

County's application.

SERVICE of this Order to Show Cause, together with papers on which it is based, shall be made by fax transmission no later than 5 p.m. on August 11, 2004, to the following:

John M. Gadzichowski, Esq.
Special Litigation Counsel
U.S. Department of Justice
Civil Rights Division, Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20539
(202) 514-3834
Attorney for Plaintiff
FAX NUMBER (202) 514-1105

Harry Greenberg, Esq.
Solomon, Richman, Greenberg, P.C.
3000 Marcus Avenue, Suite 1E5
Lake Success, New York 11042
(516) 437-6443
Attorneys for the Police Benevolent Association of Nassau County, Inc.
FAX NUMBER (516) 437-6434

Michael Axelrod, Esq.
Certilman Balin
90 Merrick Avenue
East Meadow, New York 11554
(516) 296-7172
Attorney for the Superior Officer's Association of Nassau County, Inc.
FAX NUMBER (516) 296-7111

**COUNSEL IS DIRECTED TO IMMEDIATELY NOTIFY
ALL PARTIES OF THIS ORDER.**

SO ORDERED:


JOANNA SEYBERT, U.S.D.J.

Dated: Central Islip, New York
August 10, 2004
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

CV 77-1881 (JS)

-against-

NASSAU COUNTY, et al.

**DECLARATION OF
LORNA B. GOODMAN**

Defendants.
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LORNA B. GOODMAN declares as follows:

1. I am the County Attorney for the County of Nassau. I submit this declaration in support of the application by the County of Nassau for entry of an Order extending the time within which the County may use the current list of officers eligible for promotion to the rank of sergeant (the "Current List").

The County's Request

2. The County seeks on this motion to extend its ability to use the Current List until the earlier of (a) February 16, 2006, or (b) the certification of a new eligible list of officers for promotion to the rank of sergeant in the Nassau County Police Department (the "Department"). A copy of the proposed Order accompanies this submission.

Expiration of the Current List

3. The Current List was derived from the promotional examination administered on January 30, 1999. On August 17, 2000, the Current List was established. Pursuant to N.Y. Civil Service Law § 56 subd. 2, the Current List will expire on August 17, 2004.

Notice of this Application

4. Notice of this application has been given to the United States Department of Justice, the Nassau County Superior Officers' Association, the Nassau County Detective Association, Inc., and the Police Benevolent Association of Nassau County, Inc. (the "PBA"), and counsel for each of these parties has been provided with a copy of the papers that are being presented to the Court.

The Views of the Other Parties

5. Plaintiff United States of America has authorized my office to inform the Court that the United States does not oppose the requested extension. The Superior Officers' Association and the Detectives Association also have authorized us to inform the Court that it does not oppose the requested extension. Only the PBA opposes this application.

Why this Application is Necessary

6. We make this application to ensure that the County has continuously available a list of eligible officers for promotion to the rank of sergeant should there be a need at any time to promote additional sergeants before a new examination can be administered.

7. The parties currently remain under the Court's jurisdiction as a result of the Consent Decree entered by Judge George C. Pratt in 1982 (the "1982 Consent Decree").

8. With respect to promotional examinations, the 1982 Consent Decree was entered to ensure, *inter alia*, that the County "not engage in any act or practice with respect to the... promotion... of employees of the NCPD, which has either the purpose or effect of discriminating against blacks on the basis of race, Hispanics on the basis of national origin or females on the basis of sex" (Consent Decree ¶ 2).

9. In order to meet its needs for Police sergeants, under the terms of the 1982 Consent Decree, a written examination may be used to establish an eligible list of officers for promotion to sergeant in the Department so long as the United States agrees to its use, or, in the alternative, if the test is shown to have no adverse impact. (Consent Decree ¶ 8(c)).

10. The Current List was established by the last promotional sergeant examination given, developed pursuant to the terms of the 1982 Consent Decree by AON Consulting. The development, validation and operation of the 1999 examination was approved by the United States. No prior applications have been made to extend the Current List.

11. The Department, in conjunction with the Nassau County Civil Service Commission, and the Office of the County Attorney, has begun the process of implementing a new examination by making diligent efforts to complete a contract with AON Consulting to develop the examination. It is anticipated that a new promotional examination will be administered in approximately March, 2005.

12. The County has been proceeding expeditiously to take all steps necessary to implement a new examination as soon as possible. An application was not made earlier to the Court because although preparation for a new examination was begun in May, we felt it was appropriate to present the application to the Court once arrangements were finalized. Unfortunately, due to the Legislative schedule being limited in the summer months, the process to secure a contract with AON to administer a new examination took longer than expected. The matter is scheduled to go before the Nassau County Legislature for approval in September.

13. A new list of eligible officers for promotion to the rank of sergeant cannot be generated until the Department of Justice has reviewed the results of the examination and authorized the County to certify a list of officers to be promoted, a process that we anticipate will take several months.

Why the Court Should Extend the Current List

14. If the Current List is allowed to expire on August 17th, while the County has no ability to put a new list in place, it will be impossible for the County to promote officers to the rank of sergeant should the need arise.

15. As explained in the Declaration of Captain Barbara Green, the Department faces a public safety crisis if the Current List expires and it is barred from promoting additional officers to the rank of sergeant. Furthermore, as explained in the Declaration of Captain Green, the Department anticipates that under the new contract between the County and the Superior Officers' Association, union members may wish to retire prior to the contract's implementation. There are presently 422 department members in the supervisory ranks and 216 are eligible to retire.

16. Additionally, as explained in the Declaration of Captain Green, the Department is in the process of increasing its headcount. Consequently, this is a time when the Department may also need to increase its supervisory ranks.

17. In light of these factors, it is of great importance to the operation of the Department that an active sergeant's list be in place until the process of establishing a new list is complete.

18. We respectfully submit that the Court should place significant weight on the decision of the United States not to oppose this application, given that this action was

brought by the United States; and the 1999 exam, which generated the Current List, was approved by the United States.

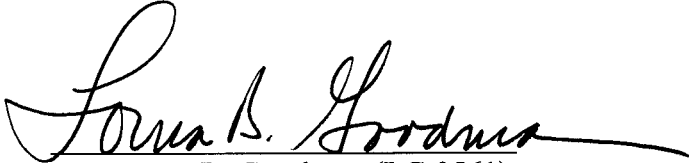
19. We also note that the PBA, which is the only party opposing the extension, has proffered no legal basis for its opposition.

Conclusion

20. For these reasons, we respectfully ask the Court to extend the Current List to earlier of (a) February 16, 2006, or, (b) the establishment of a new eligible list of candidates for promotion to the rank of sergeant in the Department.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 11, 2004.


Lorna B. Goodman (LG 0561)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

CV 77-1881 (JS)

-against-

NASSAU COUNTY, et al.

**DECLARATION OF
BARBARA GREEN**

Defendants.
-----X

Barbara Green declares as follows:

1. I am a Captain in the Nassau County Police Department and the Deputy Commanding Officer of the Department's Personnel and Accounting Bureau. I submit this declaration in support of the application by Nassau County for entry of an Order extending the time within which the current eligible list of officers for promotion to the rank of sergeant (the "Current List") may be used.

2. In my capacity of Deputy Commanding Officer of the Department's Personnel and Accounting Bureau, I am familiar with the departmental practice to rely on the Nassau County Civil Service Commission to develop an examination for promotion of officer to the rank of sergeant, administer the exam, and promulgate a list of eligible candidates. All police officers promoted to the rank of sergeant are selected from the list certified by the Nassau County Civil Service Commission.

3. Because the Department by law will be unable to promote officers to the rank of sergeant if the Current List is allowed to expire, we respectfully ask the Court to grant the County's application and extend the Current List.

**Why the Current List
Must Be Maintained
Until A New List Can Be Certified**

4. The Department faces a public safety crisis if the Current List expires and they thus are barred from promoting additional officers to the rank of sergeant. The Department anticipates that upon the settlement of the terms of the contract between the County and the Superior Officers' Association, it is possible that there may be changes that encourage members to retire prior to the contract's implementation. There are presently 422 department members in the supervisory ranks and 216 are eligible to retire.

5. Additionally, the Department is in the process of rebuilding its sworn headcount, a time traditionally when the supervisory ranks would need to be increased.

6. If the Current List is permitted to expire on August 17th, and the Department is thus barred from promoting officers to the rank of sergeant, we believe that public safety will be compromised.

Conclusion

7. For these reasons, we respectfully ask the Court to extend the Current List as requested by the County.

I declare under penalty of perjury the forgoing is true and correct.

Executed on August 11, 2004.



Captain Barbara Green

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

CV 77-1881 (JS)

-against-

NASSAU COUNTY, et al.

Defendants.

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ORDER

On April 21, 1982, the Court approved and entered a Consent Decree (the "1982 Consent Decree") in United States v. Nassau County, et al., 77 CV 1881, agreed and consented to by all parties in this action: plaintiff the United States of America (the "United States"), defendant Nassau County, defendant Nassau County Commissioner of Police, defendants Nassau County Civil Service Commissioner (collectively, the "Nassau County defendants"), defendant Police Benevolent Association of Nassau County, Inc. (the "PBA") and defendant-in-intervention Superior Officer's Association of Nassau County, Inc. (the "SOA").

The parties currently remain under the Court's jurisdiction as a result of the 1982 Consent Decree, which was entered by Judge George C. Pratt. The 1982 Consent Decree was entered to ensure "that blacks, Hispanics and females are considered for employment by Nassau County in the [Department] on an equal basis with white males" (1982 Consent Decree ¶ 1).

Under the terms of the 1982 Consent Decree, a written examination may be used to establish an eligible list of candidates for promotion to the rank of sergeant in the

Nassau County Police Department (the "Department") so long as the test is shown to have no adverse impact and can be shown to be job-related (1982 Consent Decree ¶ 8(a)).

The current list was generated by the last examination given on January 31, 1999, which was developed pursuant to the terms of the 1982 Consent Decree. Pursuant to N.Y. Civil Service Law § 56, on August 17, 2000, the Nassau County Civil Service Commission established an eligible list of officers for promotion to the rank of sergeant in the Nassau County Police Department based on the results of the 1999 Examination.

Under New York law, a municipal hiring authority may use a competitive civil service examination for no more than four years. N.Y. Civil Service Law § 56 subd. 2.

No prior requests for an extension have been made. The County will use its best efforts to administer an exam by March 2005. However, a new eligible list will not be available before the current list expires. Entry of this Order will ensure that the County has continuously available a list of eligible officers for promotion to the rank of sergeant should there be a need at any time.

The Court finds that good cause has been shown for this extension and that it is consistent with the provisions and purposes of the Consent Decree.

ACCORDINGLY, IT IS HEREBY ORDERED:

Nassau County, the Nassau County Civil Service Commission, the Nassau County Commissioner of Police, the Nassau County Police Department, may continue to use the Current List in accord with the provisions of the Consent Decree until the earlier of (1)

February 16, 2006, or (2) the establishment of a new eligible list of candidates for promotion to the rank of sergeant in the Department.

ENTERED this _____ day of August 2004 in Central Islip, New York.

JOANNA SEYBERT, U.S.D.J.