

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLEVELAND FIRE FIGHTERS FOR	)	CASE NO. 1:00 CV 0301
FAIR HIRING PRACTICES, et al.,)	
	)	JUDGE DONALD C. NUGENT
Plaintiffs,)	
	)	<u>CLEVELAND FIRE FIGHTERS FOR</u>
v.	)	<u>FAIR HIRING PRACTICES' POST-</u>
	)	<u>HEARING MEMORANDUM</u>
CITY OF CLEVELAND, et al.,)	
)	
Defendants.)	
)	

LAMONT C. HEADEN, et al.,	)	CASE NO. C73-330
)	
Plaintiffs,	)	JUDGE DONALD C. NUGENT
)	
and)	
)	
VANGUARDS OF CLEVELAND,)	
)	
Intervenor Plaintiffs,)	
)	
v.)	
)	
CITY OF CLEVELAND, et al.,)	

I. STATEMENT OF THE CASE.

In September of 2008, the City and Vanguards moved to extend the life of the Second Amended Consent Decree in this case based upon the authority of paragraph 1 of that Decree. Thereafter, the Cleveland Fire Fighters for Fair Hiring Practices

("CFFHP") generally opposed the City's and Vanguard's motions. On May 28, 2009, an evidentiary hearing was held before this Court, and the Court permitted the Parties to file post-hearing briefs. The within memorandum is intended to supplement the brief filed by CFFHP with this Court on December 31, 2008.

II. STIPULATED ORDER OF MODIFICATION.

Following the May 28, 2009 hearing, the Parties continued their prehearing discussions and reached a firm consensus on a proposed Stipulated Order modifying paragraph 1 of the Second Amended Consent Decree. Ex. A, Stipulated Order. CFFHP believes that in light of the extension language contained in paragraph one of the Second Amended Decree, the circumstances that have occurred since that Decree was entered into, and the uncertainty of this litigation, the adoption of that Stipulated Order is in the best interests of the public and all Parties to this case. The adoption of the Stipulated Order would avoid further contentious and expensive litigation, assist with restoring harmony among the members of the Cleveland Fire Department, permit additional appointments to the Department to be made as planned, and bring the Decree to a definitive and final conclusion by the end of 2014. As a result, CFFHP will withdraw its opposition to the City's and Vanguard's motions in the event that this Court adopts the Stipulated Order that was negotiated and agreed to by the Parties and is attached hereto as Exhibit A.

III. POST-HEARING ARGUMENT.

In the event that this Court declines to adopt the proposed Stipulated Order attached hereto as Exhibit A, CFFHP, based upon the reasons set forth in its December 31, 2008 Amended Response Brief, requests that the City's and Vanguard's motions to extend the Decree be denied.

The evidence presented by the Parties at the May 28, 2009 hearing supports CFFHP's position. The Vanguard's witness, Chief Bashir Rahman, testified that he was part of the City's first fire fighter class to be hired utilizing the affirmative action *Headen* ratios in 1973. Chief Rahman acknowledged that the *Headen* ratios have been used to make the appointments to each fire fighter hiring class since 1973. As a result, the present date is so far removed from 1973 and Judge Krupansky's 1975 determination that the City had unlawfully discriminated against minorities in the hiring of fire fighters that a further continuation of the order is not justified due to its lack of proximity to the discriminatory events. See CFFHP's December 31, 2008 Response Brief.

All persons that testified at the May 28, 2009 hearing (City of Cleveland Fire Chief Paul Stubbs, Vanguard's Member Chief Bashir Rahman, and CFFHP Member Frank Szabo) described and acknowledged the extensive efforts put forth by the City (and supported by the Vanguard's and CFFHP) during the past 25 years to ensure that the written entrance examination and entire hiring process is not discriminatory against members of any race. Moreover, the three witnesses described the City's programs that are presently in operation to train minority candidates in the skills of the fire fighting profession, recruit minority candidates to take the City's entrance examination, and assist minority candidates in succeeding on the exam. In CFFHP's view, those minority

candidate focused recruitment, training, and educational programs, as opposed to an affirmative action based hiring formula, constitute the most narrowly tailored, constitutional, fair, and sensible remedies to expand the scope, diversity and quality of the City's fire fighter applicant pool.

CONCLUSION

For the foregoing reasons, CFFHP respectfully requests this Court to adopt the Stipulated Order attached hereto as Exhibit A. In the alternative, in the event this Court declines to adopt the attached Stipulated Order, CFFHP respectfully requests that the City and Vanguard's motions to extend the Second Amended Decree be denied.

Respectfully submitted,

GOODWIN & BRYAN, LLP

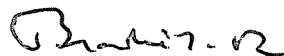


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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed electronically on June 11, 2009. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.



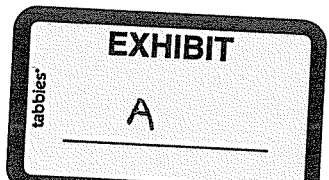
BRADRIC T. BRYAN

IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF OHIO
 EASTERN DIVISION

CLEVELAND FIREFIGHTERS FOR FAIR	)	CASE NO. 1:00 CV 0301
HIRING PRACTICES, <i>et al.</i>)	
	)	JUDGE DONALD C. NUGENT
)	
Plaintiffs,)	
vs.)	
)	
CITY OF CLEVELAND, <i>et al.</i>)	
)	
Defendants.)	

LAMONT C. HEADEN, <i>et al.</i>	)	CASE NO. C73-330
)	
Plaintiffs,	)	JUDGE DONALD C. NUGENT
)	
and)	
)	
VANGUARDS OF CLEVELAND,	)	STIPULATED ORDER
	)	MODIFYING PARAGRAPH
Intervenor Plaintiffs,	)	ONE OF THE CONSENT
	)	DECREE ENTERED ON
vs.	)	SEPTEMBER 29, 2000
)	
CITY OF CLEVELAND, <i>et al.</i>)	
)	
Defendants.)	

WHEREAS, the Second Amended Consent Decree of September 29, 2000 stated that "legitimate circumstances may arise which may prevent the City from establishing and hiring from the two additional eligible lists anticipated herein within the prescribed time"; authorized the City to "petition the Court for a reasonable extension of time to establish the remaining eligible lists and make appointments therefrom during the life of said lists"; and provided that said petition by the City "shall be approved [by



the Court] for a reasonable time provided that the City has made a good faith effort to meet the September 29, 2008 deadline."

WHEREAS, such unanticipated and legitimate circumstances have arisen; and the City has made a good faith effort to meet the September 29, 2008 deadline.

WHEREAS, the City has petitioned the Court for such a reasonable extension; the Vanguarders have filed a similar such motion; and the Cleveland Firefighters for Fair Hiring Practices (CFFHP) has conditionally opposed said motion, in part.

WHEREAS, an evidentiary hearing thereon was held on May 29, 2009.

WHEREAS, before and after said evidentiary hearing the three parties engaged in extensive discussions seeking a compromise to avoid further contentious and expensive litigation, restore harmony among the members of the Cleveland Fire Department, obtain additional manpower/womanpower within the firehouses as soon as reasonably possible, and ensure the safety of the residents of the City of Cleveland.

WHEREAS, the parties negotiated what they unanimously agree is a reasonable, necessary, practical, and fair response to the petition by the City.

WHEREAS, in light of the surrounding circumstances which include, but are not limited to: the dates on which future retirements (and therefore vacancies) are anticipated; the target date for the next entrance examination in the fall of 2009 (followed by the physical abilities test, background tests, medical examinations and the preparation of an eligible list); the target date for the next eligible list in 2010; the life of an eligible list which is two years; and the need for administrative time to take the steps necessary to create any given eligible list. Whereas the parties agree that it is necessary and prudent to provide for sufficient time that the City may (if necessary)

administer the testing needed to create a second eligible list prior to the sunset date of the decree as modified by this stipulation and order.

WHEREAS, the CFFHP hereby withdraws its partial opposition to an extension of the consent decree conditioned upon the approval by the Court of the within stipulation and order.

THEREFORE, the parties (with the participation of Local 93 of the International Association of Firefighters) have consented to a limited modification of the Second Amended Consent Decree.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Paragraph one of the second amended consent decree shall be modified to read as follows:

The Headen decree shall remain in full force and effect until the City of Cleveland Department of Public Safety, Division of Fire, reaches a 33 1/3% minority makeup or until December 31, 2014, whichever comes first. Pursuant to Civil Service Rules, eligible lists are valid for two years. Pursuant to this Stipulation and Order, the City is required to have no less than one new eligible list established and appointments to any existing Department vacancies made therefrom before December 31, 2014. For these purposes, the percentage makeup of the Division of Fire shall be computed by determining the percentage of minorities (as defined by the decree) within the uniformed ranks of the Division of Fire, regardless of rank.

2. The date of September 29, 2008 in paragraph eight (8) shall be changed to December 31, 2014.

3. All remaining provisions of the second amended consent decree shall remain in full force and effect with the exception of the following:

- a) The option of continuing the recruitment and training programs referenced in paragraph two shall be available to the City without further order of Court; and

- b) The attorneys fees provision of paragraph four is deleted without prejudice to the claims by the CFFHP and/or the Vanguard, should they be tendered, for attorneys fees and expenses.

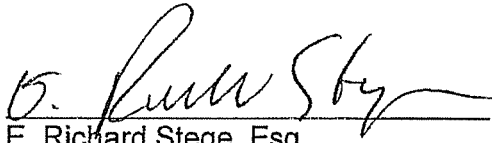
Judge Donald C. Nugent
United States District Court

APPROVED IN FORM AND SUBSTANCE

Kevin J. Gibbons (by ERS -- Consent given 6/5/09)

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A handwritten signature in black ink, appearing to read "E. Richard Stege", written over a horizontal line.

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