

19

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED MAR 27 2007

READING BRANCH, NATIONAL
ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, the NATIONAL
ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, and CORTNEY
HORNE, on behalf of himself and all others
similarly situated,

Plaintiffs,

v.

CITY OF READING,

Defendant.

Civil Action No. 05-6334-JS

ENTERED

MAR 27 2007

CLERK OF COURT

CONSENT DECREE

WHEREAS, Plaintiffs NAACP – on behalf of itself and its Reading Branch office – and Courtney Horne (“Plaintiffs”) have commenced the above-captioned action, which alleges that Defendant City of Reading (“City”) has implemented and maintained Fire Department recruitment, application, and hiring practices that have an adverse impact on African-American and other minority Fire Department applicants and prospective applicants in violation of the Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-1, *et seq.* (“Title VII”); and

WHEREAS, throughout the above-captioned litigation, the City consistently has denied liability under Title VII or any other anti-discrimination statute and has steadfastly asserted that its Fire Department recruitment, application, and hiring practices are non-discriminatory in both purpose and impact; and

WHEREAS, due to the significant time, expense, and uncertainty of continued litigation, the parties have made good faith efforts to resolve their disputes amicably and in the public interest and have participated in ongoing and extensive settlement negotiations; and

WHEREAS, the signatories herein have the full authority of their respective principals to enter into this Consent Decree on their behalf;

NOW, THEREFORE, IT IS HEREBY AGREED, by and between the undersigned, that the following terms shall be implemented without undue delay:

The 2005 Entry Level Firefighter List

1. The City may hire up to ten firefighters from the civil service list certified on June 13, 2005 and entitled "2005 Entry Level Firefighter" and will promptly develop plans for the administration of a new civil service examination in conformance with this Consent Decree. The current civil service list will not be extended..

Recruitment of Firefighter Job Applicants

2. The City shall in good faith seek to recruit and employ qualified black and other minority applicants for firefighters in numbers reflecting their availability in the relevant labor market which, for the purposes of this Decree, shall be Berks County, Pennsylvania. The most current U.S. Census Bureau population Census reports the racial composition of Berks County as follows:

White persons, percent, 2004	92.7%
Black persons, percent, 2004	4.6%
American Indian and Alaska Native persons, percent, 2004	0.2%
Asian persons, percent, 2004	1.2%
Native Hawaiian and Other Pacific Islander, percent, 2004	0.1%

17. At least 20 days prior to the formal issuance of any recommendation(s), the DB shall provide the undersigned parties with the proposed recommendation(s) and an opportunity to review and comment to the DB. Upon formal issuance, the DB's recommendation(s) shall be entitled to great weight, and it is anticipated that both parties will jointly support the recommendation(s) and that the City will act in good faith to implement the recommendation(s). If both the City and the NAACP support any of the DB's recommendation(s), the parties shall file with the Court a petition to modify this Consent Decree to include the substance of the DB's recommendation(s). If, however, either the plaintiffs or the City objects to implementation of any of the DB's recommendation(s), as issued, the objecting party shall give reasonable written notice to opposing counsel, specifically identifying the recommendation(s) not approved, and the parties shall engage in good faith efforts to amicably resolve the dispute.

If the dispute cannot be resolved the parties shall notify the Court, and the Court will determine, after appropriate fact-finding proceedings whether to modify the Consent Decree to require implementation of the disputed DB recommendation(s). In determining whether to modify the Consent Decree to include any DB recommendation, the Court shall consider whether the recommendation is consistent with the intent of the parties in entering into this Consent Decree and whether the recommendation can be implemented in a manner that does not violate substantive law. *See, e.g., Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 576 n.9 (1984) (“a district court cannot enter a disputed modification of a Consent Decree in Title VII litigation if the resulting order is inconsistent with the statute”).

18. The DB shall have timely access to the applicant flow data referenced in para. 8, and shall monitor and analyze this data on a regular basis.

19. The DB shall have timely access to and monitor the Fire Department's Firefighter recruitment, application, testing, and selection processes and assure that such processes are free from adverse impact and that such processes are validated in a manner that complies with 29 C.F.R. § 1604.01, *et seq.*

20. Whenever a African American or other minority job applicant is disqualified at any stage of the Fire Department application/selection process, except the written examination stage, the DB shall be so informed and shall be granted access to information concerning the disqualification decision in order to asses whether the decision was non-discriminatory and whether the disqualified applicant was treated in the same manner as similarly situated White applicants. If, after reviewing the information, the DB has concerns that the disqualified applicant's minority status may have been a factor in the disqualification decision, the DB shall report its concerns to the City's Fire Civil Service Commission which shall review the disqualification decision, take any remedial actions it deems appropriate, and apprise the DB of its response to the DB's concerns. It is understood that, in performing its duties under this paragraph, the DB shall take all steps necessary to ensure that applicants' personal information remain confidential.

The Diversity Consultant

21. The City shall retain a qualified person to serve in the position of Diversity Consultant ("Consultant"). The City may designate the person in the newly created job position

in the Human Resources Department dedicated to equal opportunity issues provided that s/he is qualified to serve as the Consultant. The Diversity Consultant shall demonstrate experience with state or locally mandated civil service systems. If a member of the City's human resources department is not qualified to serve as as the Consultant, then the DB shall consult with the undersigned parties about the selection of a Consultant.

22. If the Consultant is not otherwise employed by the City, s/he shall be paid by the City.

23. The Consultant shall serve as a resource to the DB and to the Fire Department for expert guidance on issues concerning recruitment, application and hiring practices. Among his/her duties, the Consultant shall assist the DB with the development and implementation of recommendations, data monitoring obligations, and reporting obligations.

Application Fee Waiver

24. The City agrees to waive the application fee for financially disadvantaged Firefighter job applicants. The DB shall develop a plan for the criteria and method for administering the application fee waiver. Alternatively, it may apply the plan applicable to police officer applicants. Prior to formal enactment, the application fee waiver plan shall be submitted to the undersigned parties, who shall have an opportunity to review and make recommendation(s) to the proposed plan.

employment opportunity. Furthermore, the City agrees to make a good faith effort to pay extra expenses beyond the budgeted amount upon a showing of good cause for the need for supplemental funding by the DB. The parties further agree that they will attempt, in good faith, to find alternate funding sources for supplemental funding.

Implementation and Compliance

27. The Court shall retain jurisdiction over this action for purposes of enforcement, interpretation, or modification of this Consent Decree until such time as this Consent Decree is terminated.

28. If either party believes that this Consent Decree has been violated or improperly applied or that it is about to be violated or improperly applied, that party shall give reasonable written notice to opposing counsel, and the parties shall engage in good faith efforts to amicably resolve the dispute. If, after the exhaustion of such good faith efforts, any party deems such efforts unsuccessful, the complaining party shall be permitted to commence mediation proceedings before a Court-annexed mediator designated by the Court. Where a dispute proceeds to mediation, the parties shall work in good faith to resolve the dispute in a practical, economical, and amicable manner. Absent extraordinary circumstances, no party shall engage in formal contempt proceedings unless the above mediation process has been exhausted. The parties understand that formal contempt proceedings are to be used, if ever, as a final resort.

29. All notices, instructions, requests for review, reports, or other written submissions required by this Consent Decree shall be sent by the required body or person by certified United States mail, return receipt requested, to the following representatives:

For the City of Reading:

Leon Churchill, Managing Director
City of Reading
815 Washington Street, Room 2-54
Reading, PA 19601-3690

Charles D. Younger, City Solicitor
City of Reading
815 Washington Street, Room 2-54
Reading, PA 19601-3690

Steven K. Ludwig, Esquire
Fox Rothschild LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291

For NAACP and /or Home:

Peter D. Winebrake, Esquire
The Winebrake Law Firm, LLC
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Dresher, PA
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David Rudovsky, Esquire
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David L. Rose, Esquire
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Washington, D.C. 20036

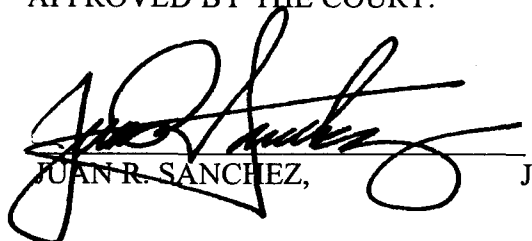
Anson Asaka, General Counsel
NAACP
4805 Mount Hope Drive
Baltimore, MD 21215

30. This Consent Decree may be terminated at any time after its entry upon joint motion of the parties. Furthermore, at any time after five years from the date of Court approval of the Consent Decree, the City may move to, and the Court may, terminate or modify the Consent Decree upon a showing of substantial and good faith compliance with the Consent Decree's terms and proof that the purposes of the Consent Decree have been attained. Upon the filing of a motion to terminate or modify this Consent Decree, the Consent Decree shall remain in effect until such time as the Court shall rule upon the motion.

Litigation Costs, Expenses, and Fees

31. Within thirty days after this Consent Decree is approved by the Court, the City shall pay to Plaintiffs' counsel a total amount of Twenty-Three Thousand Dollars (\$23,000.00). This payment satisfies the City's *entire* liability to Plaintiffs for costs, expenses, and counsel fees which plaintiffs assert would be recoverable under 42 U.S.C. § 2000e-5(k), 42 U.S.C. § 1988, or any other cost/fee recovery provision, and neither Plaintiffs nor their undersigned counsel shall seek the payment of additional damages, costs, expenses, or fees. However, nothing herein shall preclude Plaintiffs or their counsel from seeking future costs, expenses, or fees incurred due to future contempt proceedings, future adversarial proceedings concerning the modification or continued application of this Consent Decree, or future proceedings necessitated by a third-party's challenge to the legality or validity of this Consent Decree.

APPROVED BY THE COURT:


JUAN R. SANCHEZ, J.