

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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 others similarly situated,	)	
	)	
Plaintiffs,	)	<b>C.A. No. 05-6334</b>
v.	)	
	)	
CITY OF READING,	)	
	)	
Defendant.	)	
	)	

**AMENDED COMPLAINT**

1. Plaintiff Cortney Horne (“Horne” or “Plaintiff Horne”) brings this suit to enforce his own rights and the rights of other African Americans and minorities to be free from discriminatory employment practices. Mr. Horne’s co-Plaintiffs, the Reading Branch of the National Association for the Advancement of Colored People, and the National Association for the Advancement of Colored People (hereinafter “NAACP” or “NAACP Plaintiffs”) are voluntary associations committed to the improvement of the status of minority groups, the elimination of discriminatory practices, and the achievement of equal employment opportunities regardless of race or color. The NAACP Plaintiffs bring this suit to secure the full enjoyment of the rights of their members and other persons they represent under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.* (hereinafter "Title VII").

**JURISDICTION AND VENUE**

2. This Court has jurisdiction of this action under Title VII, 42 U.S.C. § 2000e-5(f)(1), 28 U.S.C. § 1331, and 28 U.S.C. § 1343.

3. Venue in this Court is proper under 28 U.S.C. § 1391(b).

**PARTIES**

4. Plaintiff Horne is an African-American resident of Berks County, Pennsylvania, who, until recently, resided within the City of Reading, Pennsylvania. Plaintiff Horne has sought employment as a firefighter in the Reading Fire Department and still seeks such employment.

5. Plaintiff NAACP is a voluntary association committed to the improvement of the social and economic status of minority groups, the elimination of racial prejudice and discrimination, and the attainment of civil rights and equal opportunities for its members and other persons.

6. Plaintiff Reading Branch, NAACP is a constituent unit of the NAACP, with the same purposes and objectives as the NAACP. While the NAACP is committed to the achievement of civil rights and equal opportunities for all minority groups, the majority of their members are black. Plaintiff Horne is a member of the NAACP.

7. The Defendant City of Reading (“Defendant City” or “City”) is a municipality incorporated under the laws of the State of Pennsylvania and is a political subdivision of the State of Pennsylvania.

8. Defendant City has a population of approximately 81,000 persons of whom at least 8,500 are black (African American) and at least 30,000 are Hispanic, and Defendant City has a working age population of more than 56,000 adults, of whom at least 5,700 are black (African-American) and at least 17,000 are Hispanic.

9. Defendant City provides fire prevention and fire repression services and other emergency services to its residents through the Reading Department of Fire and Rescue Services

("Fire Department"), which Defendant City operates and maintains.

10. Defendant City is an employer of employees under common usage and is an employer as that term is defined under Title VII.

11. Of the approximately 147 uniformed Fire Department employees working for Defendant City, not one (0) is African-American (black) and approximately two (2) are Hispanic.

12. Plaintiff Horne and members of the NAACP and other minorities who reside in and near Reading are qualified for employment as firefighters, and have been injured by Defendant's racially discriminatory employment practices. They are threatened with continued and future injury by Defendant's discriminatory recruitment and hiring practices.

13. Plaintiff Horne and other members of the NAACP and other minorities who reside in and near Reading who are interested in employment by the Reading Fire Department have applied or attempted to apply for employment with Defendant City but have not been offered employment.

14. Plaintiff Horne has applied for employment as a Reading firefighter two times, but has not been hired.

15. On or about April 17, 2004, Plaintiff Horne attempted to take the City's Civil Service examination for appointment to the position of firefighter. Upon his arrival at the specified location and time for the scheduled examination, Horne was told that he could not take the examination. Despite his protests, Horne was not allowed to sit for the examination, which is a necessary first step for employment with the Reading Fire Department.

16. Other members of the NAACP Plaintiffs have been injured by the discriminatory

recruitment practices of the Defendant City by not being informed of employment opportunities for firefighter vacancies with Defendant City. Some such members have reasonably believed that submitting an application for employment as a firefighter with Defendant City would be futile because of their race.

17. The Defendant City has engaged in employment policies and practices that have discriminated and continue to discriminate against minorities, including Plaintiff Horne and other members of the NAACP Plaintiffs and other persons represented by the plaintiffs because of their race and/or national origin. The Defendant City has implemented these policies, among other ways, by:

- a. refusing to recruit and hire African Americans and other minorities for firefighter positions on the same basis as whites;
- b. basing such recruitment on a primarily “word of mouth” system that results in the employment of friends and relatives of current City firefighters, the vast majority of whom are white;
- c. failing or refusing to adopt nondiscriminatory recruitment, application, testing, and selection techniques for the position of firefighter;
- d. failing or refusing to take appropriate action to correct the effects of its past discriminatory policies and practices.

18. The above employment policies and practices have had a disparate impact on minority job applicants and prospective job applicants on the basis of their race and/or national origin, and such policies and practices are neither job related for the position of firefighter nor consistent with business necessity.

19. The NAACP Plaintiffs have conducted an investigation of the Defendant's employment practices pertaining to the Fire Department. The plaintiffs have notified the Defendant City of the results of the investigation and of the facts and policies and practices described in this complaint and have attempted to eliminate these practices through negotiation and settlement.

20. The Plaintiffs have performed all of the prerequisites necessary to filing suit under Title VII. Plaintiff Horne dual-filed a charge alleging discrimination by the City of Reading with the Equal Employment Opportunity Commission and the Pennsylvania Human Relations Commission on November 19, 2004. On September 15, 2005, the EEOC issued a right-to-sue letter.

**COUNT I**  
**(Disparate Treatment Under Title VII)**

21. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

22. Title VII makes it illegal for an employer to “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin,” 42 U.S.C. § 2000e-2(a)(1), or to “limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin,” *id.* at § 2000e-2(a)(2).

23. The acts and practices of Defendant City described above constitute a pattern and

practice of resistance to the full enjoyment of the rights of African Americans and other minorities (including the rights of members and other persons represented by plaintiffs) to equal employment opportunities with the Defendant City in its Fire Department without discrimination because of race and/or national origin. These acts and practices are of such a nature and are intended to deny the full exercise of rights secured by Title VII of the Civil Rights Act of 1964, as amended, to minorities who are members of the plaintiffs or are otherwise represented by the Plaintiffs.

24. Unless restrained by order of this Court, Defendant City will continue to pursue policies and practices that are the same as or similar to those alleged in this complaint, and will not take adequate steps to redress the discriminatory effects of those policies and practices.

**COUNT II**  
**(Disparate Impact Under Title VII)**

25. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

26. Title VII “proscribes not only overt discrimination but also practices that are fair and form, but discriminatory in operation.” *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). Under the disparate impact theory of Title VII liability, a employment practice is unlawful if it “causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity.” 42 U.S.C. § 2000e-2(k)(1)(A)(i).

27. Based on the facts alleged herein, Defendant is liable to Plaintiff and other class members for violating Title VII under the disparate impact theory of liability.

28. Unless restrained by order of this Court, Defendant City will continue to pursue

policies and practices that are the same as or similar to those alleged in this complaint, and will not take adequate steps to redress the discriminatory impact of those policies and practices.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for orders preliminarily and permanently enjoining the Defendant, its officers, agents, employees, successors and all persons in active concert or participation with them from engaging in employment practices which discriminate on the basis of race and/or national origin, and specifically from:

- a. discriminating against African American and other minority candidates for employment as firefighters on the basis of race and/or national origin in the recruitment, selection, and hiring of firefighters;
- b. discriminating against African American and other minority candidates by recruiting and hiring firefighters primarily through a word of mouth system;
- c. failing to adopt fair and nondiscriminatory employment practices which are designed to assure that African American and other minority applicants for employment and employees are treated without discrimination and are treated as fairly and well as white applicants for employment who are equally qualified for the employment they seek;
- d. failing to adopt and implement a vigorous recruitment program designed to attract qualified African American and other minority applicants for employment in numbers which at least reflect the proportion of minority applicants and candidates in and around the City of Reading, and to advise those minority candidates and applicants that the Defendant City is an equal opportunity employer that seeks qualified minority applicants for employment as firefighters, as well as other qualified applicants.





UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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 others similarly situated,	)	
	)	
Plaintiffs,	)	C.A. No. 05-6334
v.	)	
	)	
CITY OF READING,	)	
	)	
Defendant.	)	

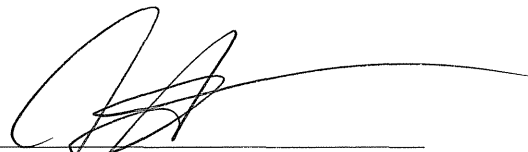
**DECLARATION OF SERVICE**

I declare under penalty of perjury that a copy of the foregoing document entitled "Amended Complaint" was served upon all parties, as addressed, on February 24, 2006 in the manner so indicated:

<input checked="" type="checkbox"/> via First Class Mail, U.S. Post Office	<input type="checkbox"/> via Facsimile
<input type="checkbox"/> via Overnight Delivery	<input type="checkbox"/> via Hand Delivery
<input checked="" type="checkbox"/> via Electronic filing and Notification	<input type="checkbox"/> via Electronic Mail

Steven K. Ludwig, Esq.  
Fox Rothschild, LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291

*sludwig@foxrothschild.com*



\_\_\_\_\_  
Avis Stewart