

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

APR 2 - 2001

Michael N. Milby
Clerk of Court

DOROTHY A. EDWARDS, AFRO-AMERICAN)
POLICE OFFICERS LEAGUE, THE)
HOUSTON POLICE ORGANIZATION OF)
SPANISH SPEAKING OFFICERS, LIONEL)
AARON, BENNIE CONWAY, CLEMENT BOYD)
CROSBY, JR., JOSE GARCIA, JR.)
RICHARD C. GARCIA, MARIA L.)
GUILLORY, ANTHONY R. JAMMER,)
CHARLES A. MCCLELLAND, SILAS)
MONTGOMERY, JR., CLYDE PHILPOTT,)
CARL WAYNE REED, RICHARD M.)
SPENCER, and BRUCE D. WILLIAMS,)

individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

v.)

CITY OF HOUSTON,)

Defendant.)

and)

HOUSTON POLICE PATROLMEN'S UNION *et al.*, and)
HOUSTON POLICE OFFICERS' UNION, *et al.*,)

Third-Party Intervenors.)

C. A. NO. H-92-2510
Judge Lynn Hughes

Final Consent Decree

A. Introduction and History of This Case

1. This is a class action employment discrimination suit brought by African-American and Hispanic-American police officers, the Afro-American Police Officers League, and the Houston

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Police Organization of Spanish Speaking Officers [“plaintiffs”] against the City of Houston [“the City”] pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., as amended by the Civil Rights Act of 1991 and the Equal Employment Opportunity Act of 1972 [“Title VII”]. As used herein, the term “plaintiffs” does not include any of the third-party intervenors.

2. This lawsuit has been consolidated with two earlier lawsuits, *Comeaux v. City of Houston*, Civil Action No. 76-H-1754, and *Kelley v. Hofheinz*, Civil Action No. H-75-1536, filed in this Court in 1976 and 1975, respectively. These lawsuits challenged a variety of allegedly discriminatory practices, and the *Comeaux* action specifically challenged discrimination in promotional tests. By the Order entered on June 18, 1992 in *Comeaux* and *Kelley*, all claims of discrimination not involving promotional examinations have been dismissed, and the claims of discrimination involving promotional examinations have been limited to promotions for the ranks of Sergeant and of Lieutenant from January 1, 1982 on.

3. In this action, plaintiffs have challenged as discriminatory the promotional examinations for the rank of Lieutenant and for the rank of Sergeant in the Houston Police Department [“HPD”] which were administered during the period from 1982 through 1991 and the system pursuant to which these examinations are prepared. Plaintiffs alleged in this lawsuit that the challenged examinations had the effect of disproportionately excluding African-Americans and Hispanic-Americans from promotion to Sergeant from 1982 to date, and of disproportionately excluding African-Americans from promotion to Lieutenant from 1982 to date, but were neither job-related nor consistent with business necessity.

4. The plaintiffs sued on their own behalf, on behalf of the African-American and Hispanic-American members of the Police Department who took a Sergeant examination from 1982 through 1991 or who will compete for promotions to Sergeant in the future, and on behalf of African-

American members of the Police Department who took a Lieutenant examination from 1982 through 1991 or who will compete for promotions to Lieutenant in the future.

5. Plaintiffs' proposed class did not include Hispanic Americans who took Lieutenant examinations from 1982 through 1991, because the records of the City show that the Lieutenant examinations did not operate to exclude Hispanic-Americans from promotion to Lieutenant during this period of time. However, plaintiffs alleged that the Sergeant examination discriminatorily delayed the promotions of both African-Americans and Hispanic-Americans to the rank of Sergeant, and a delay in their promotion to the rank of Sergeant is necessarily a delay in their ability to compete for promotion to Lieutenant.

6. The plaintiffs and the City have consented to the settlement of this action and to the relief provided herein. The third-party intervenors have not consented to the provisions of this Consent Decree.

7. This updated Consent Decree reflects and describes the actions taken prior to October 16, 2000, including amendments to the version of the Consent Decree granted preliminary approval on Feb. 3, 1993, the actions taken pursuant to the Interim Order of Feb. 5, 1997, and the completion of all remedial promotions although some are still acting promotees.

B. Certification of the Plaintiff Class, and Finding of Jurisdiction

8. Based upon the stipulations of the plaintiffs and the defendant and the information of record, the Court certifies and defines the following class:

a. All African-Americans who are employed, or at any time since January 1, 1982 were employed, as Class A peace officers by HPD and who took a promotional examination for the rank of Lieutenant or for the rank of Sergeant which was administered at any time from January 1, 1982 to the present, and those who will compete for such promotions in the

future; and

b. All Hispanic-Americans who are employed, or at any time since January 1, 1982 were employed, as Class A peace officers by HPD and who took a promotional examination for the rank of Sergeant which was administered at any time from January 1, 1982 to the present, and those who will compete for such promotions in the future.

9. This Court has jurisdiction over the claims alleged herein by virtue of 28 U.S.C. §§ 1331 and 1343 and § 706(f) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f). All of the administrative and procedural requirements to suit under Title VII have been satisfied.

C. Basis of the Consent Decree

10. Plaintiffs and the defendant agreed to enter the relief provided in the Consent Decree:

a. on evidence that the promotional examinations for Sergeant from 1982 through 1991 had a racially disparate impact on blacks;

b. on evidence that the promotional examinations for Sergeant from 1983 through 1991 had a racially disparate impact on Hispanics;

c. on evidence that the promotional examinations for Lieutenant from 1982 through 1991 had a racially disparate impact on blacks;

d. on evidence that there was a second type of racially disparate impact in the promotional examinations for Sergeant as to both blacks and Hispanics, in that the examinations substantially delayed the promotions of both blacks and Hispanics to Sergeant and thus substantially postponed their ability to compete for promotion to Lieutenant;

e. on ample evidence that the City's promotional examinations for the ranks of Sergeant and Lieutenant from 1982 through 1991 were not job-related, or that there was substantial doubt as to their job-relatedness; and

f. on the experience of the Houston Fire Department in having promotional examinations prepared in the same manner as the Police Department promotional examinations, with the same personnel in the Houston Civil Service Department working on both examinations, in having performed a criterion-related validation study on the promotional examinations to the first two promotional ranks in the Fire Department, Chauffeur and Junior Captain, on seeing plaintiffs' expert study, and in concluding that there was substantial risk of being found liable if the case were not settled.

11. The evidence received in the 1999 fairness hearing, which included evidence adduced during the 1993 fairness hearing, and the findings of this Court, show that the defendant City had, and continues to have, a strong basis in evidence as to each of the above factors.

D. Retrospective Injunctive Relief for the African-Americans and Hispanic-Americans Harmed by the City's Use of the Challenged Examinations

12. Members of the plaintiff class have received 96 remedial promotions to Sergeant, and 10 remedial promotions to Lieutenant, as set forth below.

13. The plaintiffs and class members [hereafter, collectively termed "class members"] receiving remedial promotions shall also receive full back seniority in rank, for both competitive and entitlement or "benefits" purposes other than pension benefits, as if they had actually been promoted on the test in question. The back seniority in rank shall not apply to pension benefits. No plaintiff or class member shall receive back seniority back to the seniority date of a test he or she did not take. The seniority dates shall be the dates six calendar months after the establishment of the register pursuant to which they were promoted, as set forth in the following table:

Table 1. Seniority Dates for Class Members Receiving Remedial Promotions

<u>Sergeant Register</u>	<u>Date of Seniority in Rank, for Remedial Promotions From this Register</u>
9/23/82	3/23/83
11/17/83	5/17/84
1/31/85	7/31/85
7/17/86	1/17/87
10/29/87	4/29/88
4/27/89	10/27/89
10/31/91	4/31/92

<u>Lieutenant Register</u>	<u>Date of Seniority in Rank, for Remedial Promotions From this Register</u>
9/27/84	3/27/85
3/3/88	9/3/88
10/12/89	4/12/90
5/23/91	11/23/91

14. In order to minimize any effect of these remedial promotions on members of the Police Department (including plaintiffs or class members) competing for promotions in the usual course, these promotions were phased in over a five-year period as follows:

Table 2. Schedule of Making Remedial Promotions

<u>Year of Promotion</u>	<u>Sergeant</u>	<u>Lieutenant</u>
1993	22	3
1994	21	2
1995	19	2
1996	18	2
1997	16	1

The 1996 remedial promotions were stayed by order of the court of appeals. The 1996 remedial promotions, along with the 1997 remedial promotions, were ultimately made on an acting basis in 1997 under the Feb. 5, 1997, Interim Order.

15. A class member who received a remedial promotion, or who was bypassed for a

remedial promotion during those years pursuant to the provisions of ¶ 18, was able to take a promotional examination for the next higher rank after having served in the lower rank for one year, without regard to his or her retroactive seniority in that rank. For example, a class member receiving a remedial promotion to Sergeant with ten years of retroactive seniority as a Sergeant was nonetheless required to work as a Sergeant for one year before being eligible to compete for promotion to Lieutenant.

16. Although plaintiffs do not agree that the results of the challenged examinations have anything to do with qualifications, both plaintiffs and the defendant recognized that there was no presently available means of determining qualifications except for whatever information may be provided by the test scores. In order to ensure that each of the class members receiving remedial promotions was qualified (to the extent that the challenged test scores can so indicate), no class member received a remedial promotion for a particular rank unless he or she had passed at least one of the promotional examinations for that rank during the 1982-1992 period.

17. Subject to the provisions of ¶¶ 16 and 27, the remedial promotions for a particular rank were made from among those plaintiffs and class members who passed one or more of the promotional examinations for that rank from 1982 to date, and who had not yet been promoted to that rank.

18. A potential conflict arose when a class member who was otherwise eligible to receive a remedial promotion was also on an eligibility list for a regular promotion, and was reached or was reachable during the life of that eligibility list. In such a situation, the class member was required to take the regular promotion, and was not allowed to take a remedial promotion.

19. To ensure equity for class members subject to the provisions of ¶ 16 above, a class member who was bypassed for a remedial promotion pursuant to ¶ 16 received back seniority in

rank at the time of his or her regular promotion, as if he or she had received a remedial promotion instead.

The provisions of this paragraph were given priority over the provisions of other paragraphs of the Consent Decree on the allocation of remedial promotions.

20. The remedial promotions to Sergeant were allocated as follows, based on the shortfall figures on which the plaintiffs and the City had agreed:

Table 3. Allocation of the Remedial Promotions to Sergeant

<u>Sergeant Examination</u>	<u>Number of Vacancies</u>	
	<u>Blacks</u>	<u>Hispanics</u>
9/23/82	5	0
11/17/83	8	7
1/31/85	10	7
7/17/86	6	2
10/29/87	7	7
4/27/89	10	1
10/31/91	<u>16</u>	<u>10</u>
Total	62	34

21. African-Americans suffered 64.6% of the shortfall in Sergeant promotions, are receiving 64.6% of the remedial promotions to Sergeant, and received this proportion of the remedial promotions to Sergeant made in each of these years: 14 remedial promotions in 1993, 14 in 1994, 12 in 1995, 12 in 1996 that were stayed and were ultimately received in 1997, and 10 that were scheduled and received in 1997.

22. Hispanic-Americans suffered 35.4% of the shortfall in Sergeant promotions, are receiving 35.4% of the remedial promotions to Sergeant, and received this proportion of the remedial promotions to Sergeant made in each of these years: 8 in 1993, 7 in 1994, 7 in 1995, 6 in 1996 that were stayed and were ultimately received in 1997, and 6 that were scheduled and received

in 1997.

23. Five of the ten remedial promotions to Lieutenant were allocated as follows:

Table 4. Allocation of Five Remedial Promotions to Lieutenant

<u>Lieutenant Examination</u>	<u>Number of Vacancies Blacks</u>
9/27/84	1
3/3/88	1
10/12/89	1
5/23/91	2

24. In addition to the five remedial promotions to Lieutenant described above, there were five other remedial promotions to Lieutenant as a form of remedy for the delay in promotion to Sergeant which occurred as a result of the Sergeant examinations, and which in turn delayed the ability of those class members promotees to compete for promotion to the rank of Lieutenant. African-Americans shall receive two of these promotions, and Hispanic-Americans shall receive three of these promotions. The class members to receive these promotions shall be those class members promoted to Sergeant who have waited the longest times between taking their first Sergeant examination after January 1, 1982 and their promotions, and who have taken and passed the examination for promotion to Lieutenant, but who have not yet been promoted. One such promotion was scheduled to be made per year over the five-year phase-in period, with the first such promotion going to an Hispanic-American and the further promotions alternating between African-Americans and Hispanic-Americans. The promotion scheduled for 1996 was stayed, and occurred in 1997 instead. The Sergeants promoted pursuant to this paragraph received back seniority in the rank of Lieutenant to a date six months after the date of the next Lieutenant examination which was given at least two years after their promotion to Sergeant, subject to the conditions and limitations of ¶ 13 of this Consent Decree. The provisions of ¶¶ 18 and 19 above apply to these remedial

promotions the same as to the others.

25. Counsel for plaintiffs developed the list of the class members to receive remedial promotions, and presented it to the City for approval. The Court would have been able to resolve any disagreements, but plaintiffs and the defendant are able to resolve all questions by themselves.

26. In compiling the list, the individual named plaintiffs had priority for receiving the remedial promotions if they otherwise qualified under the standards set forth herein. The next priority was to use rank order on the test in question.

27. If for any reason there were not enough still-employed-but-unpromoted class members of a particular racial or ethnic group who took and passed one of the challenged tests to make up the numbers of remedial promotions for that group from that test, but there are class members of that group who failed the test in question but passed another test for the same rank within the 1982-1992 time period, such class members were given remedial promotions for the test notwithstanding their failure of the test.

28. If for any reason these numbers still could not be made up for a particular test by the class members of the appropriate group in question who took the test, they were made up from among the unpromoted class members of that group passing another test, starting with the earliest test from 1982 to date with unpromoted but passing class members.

29. If any class member declined a remedial promotion for any reason, that promotion was given to the next-highest-ranking (or scoring) plaintiff or class member.

30. The order in which remedial promotions were phased in was as follows: (1) the individual named plaintiffs satisfying the conditions set forth herein were promoted first, subject to the allocation of promotions as between African-Americans and Hispanic-Americans; (2) remedial promotions were thereafter made in rank order from among test-passers and in order of test score (if

known) or total score (where test score was not separately stated) among those class members who did not pass this test but passed another test for the same HPD rank; (3) and the tests within the 1982-1992 time period were reached in chronological order, with the earliest test first.

E. Limitations on Remedial Seniority in Rank

31. On February 5, 1999, the Court directed the plaintiffs and the defendant to reduce the number of plaintiff class members with remedial seniority in rank to the number of remedial promotions. On July 12, 1999, plaintiffs' and the defendant City filed their Joint Motion for Approval of their Joint Report to the Court on the Restriction of the Number of Class Members with Remedial Seniority to 106 Persons. Their Report set forth two principles to govern the question of which plaintiff class members were to lose their remedial seniority in rank:

a. The first principle proposed by the parties is that the class member originally scheduled to receive a remedial promotion, but who was reachable on a regular list and was therefore required to delay any promotion for up to two years until he or she was reached on the regular list, while another class member took the remedial promotion, should be the person to keep the constructive rank seniority for that promotion. Promotions result in pay increases of several thousands of dollars a year. The mandatory delay in promotion may therefore have cost the original class member several thousand dollars, and retention of the constructive rank seniority is the only countervailing benefit to that person. The "extra" remedial rank seniority should be taken from the class member who received an earlier promotion because of that provision of the Consent Decree.

b. Second, where a class member who received constructive rank seniority has died or left the Police Department, ending that grant of constructive rank seniority, that end should be taken into account as reducing the total number of grants of constructive rank

seniority towards the goal of 106. Otherwise, the trimming of grants of remedial seniority in rank ordered by the Court will reduce the extant total to fewer than the 106 grants to which the plaintiffs and defendants were ordered to conform.

32. The Motion is well taken, and it is granted. The Plaintiffs' and Defendant's Joint Motion for Approval of their Joint Report to the Court on the Restriction of the Number of Class Members with Remedial Seniority to 106 Persons is approved. The defendant shall remove the remedial seniority in rank of the following persons, and shall correct its records to show seniority in rank only from the date of their promotion to that rank:

Name	Employee and Required Adjustment
Auzenne, Adam	87559 (must lose remedial rank seniority as Sergeant)
Sanchez, Richard	61115 (must lose remedial rank seniority as Sergeant)
Rodriguez, Ralph	81759 (must lose remedial rank seniority as Sergeant)
Carradero, Julio	79433 (must lose remedial rank seniority as Sergeant)
Rios, William	82381 (must lose remedial rank seniority as Sergeant)
Munoz, Roberto	59098 (must lose remedial rank seniority as Sergeant)
Salazar, James	77805 (must lose remedial rank seniority as Sergeant)
Calix, Elvin	82345 (must lose remedial rank seniority as Sergeant)
Castaneda, Rodolfo	57866 (must lose remedial rank seniority as Sergeant)
Picazo, William	88981 (must lose remedial rank seniority as Sergeant)
Ong, Cynthia	80764 (must lose remedial rank seniority as Sergeant)
Conway, Bennie	57680 (remedial rank seniority as Lieutenant must be changed from March 27, 1985, to April 12, 1990)
Freddy Guidry	31177 (must lose remedial rank seniority as Lieutenant)

Trevino, John P. 58748 (must lose remedial rank seniority as Lieutenant)

Trevino, Elma A. 81000 (would have lost remedial rank seniority as Lieutenant,
but resigned)

These Sergeants and Lieutenants shall have seniority in rank based on the dates of their acting or permanent promotions. They shall lose any take-home cars they now possess solely as a result of constructive seniority in rank, but shall not be removed from their present assignments and shifts for the purpose of allowing re-bidding for those positions.

F. Waiver of Back Pay

33. Plaintiffs and their class waive all claims for back pay and interest under all Federal and State anti-discrimination laws arising from the City's use of the challenged examinations.

34. Plaintiffs and their class do not waive any right they may have to seek appropriate relief against any person who, or organization which, takes any action which has the effect of unreasonably delaying any remedial promotions under this Consent Decree. This paragraph is not intended, and shall not be construed, to apply to any person or organization, whether or not a member of the plaintiff class, for making an adequately founded objection to this settlement under the procedures set forth below for determining whether this Consent Decree should be given final approval, or for pursuing that objection on appeal.

G. Prospective Relief

35. To the extent that the City develops new promotional examinations for Sergeant and Lieutenant through its Civil Service Department and does not use alternative examining procedures pursuant to Meet and Confer agreements, the City defendants shall continue the procedures for the development and use of promotional examinations for Sergeant and Lieutenant which were used for

the development of the promotional examinations for Sergeant and Lieutenant from 1982 to date, except as follows:

- a. A firm date for the administration of the selection procedure and the final list of books (or parts thereof) or other texts shall be announced to members of the HPD at least ninety days in advance of the administration of the selection procedure.
- b. The City may continue to use its present system allowing protests of particular test items, the multiple-keying of some items where appropriate, and the discarding of other test items where appropriate.
- c. The remaining items on the test shall be scored. Test-takers must achieve a score of 70% of the remaining items correct in order to pass the test and to be eligible for promotion.
- d. Seniority points shall be added to the score on the written test, as is done at present, in order to obtain a rank-ordered list. The City shall post an eligibility list as soon as possible. The City shall continue its present procedures for making promotions on a rank-ordered basis. The City shall consult with the plaintiffs herein before making any change in these procedures in the future.
- e. Promotional registers of test-passers resulting from use of the new selection procedures shall remain in effect for a period of two and one-half years unless earlier exhausted.
- f. The September 30, 1992 Lieutenant promotional register was extended for one year, so that it expired on September 30, 1994. The extension of this list benefitted all of the persons who passed this test, regardless of race or national origin.

g. To the extent reasonably necessary to comply with the former provisions of this paragraph with respect to log-linear analysis, the City may sometimes have taken a longer period of time to make promotions than the time allowed under State law, without incurring any liability for back pay for such additional period of time.

h. The provisions of this paragraph supersede any provisions of The Fire and Police Civil Service Act, Texas Local Government Code chapter 143, as amended, to the contrary.

36. Nothing in this Consent Decree shall be construed to prevent any amendment of The Fire and Police Civil Service Act, Texas Local Government Code chapter 143, to create a statutory two-year life, or longer life, for promotional registers for any position in the HPD.

37. Nothing in this Consent Decree shall be construed to prevent the defendant from adopting an alternative selection procedure for promotion to the ranks of Sergeant or Lieutenant, if (1) the promotions from such procedure have no adverse impact against African-Americans or Hispanic-Americans or (2), if the use of the procedure in question results in adverse impact against either African-Americans or Hispanics, if the procedure in question meets the requirements of the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607 (2000), is job-related and consistent with business necessity, and if all reasonable steps consistent with job-relatedness and business necessity have been taken to eliminate such adverse impact or reduce it to the greatest extent practicable.

a. Subject to the other provisions of this paragraph, the Court notes that the plaintiffs have expressly approved the concept of the current Meet and Confer Agreement between the City and the Houston Police Officers' Union as the bargaining representative for officers of the Police Department on this subject, which was approved by an overwhelming vote of officers, combining a written test of some type and a properly conducted assessment center

of some type, and using the test to determine which promotional candidates will be processed in the assessment center. While counsel for plaintiffs and the plaintiffs' expert may make suggestions as to the development and use of such procedures, they are not required to attend any of the negotiations between the City and bargaining agent over a new Meet and Confer agreement.

b. The defendant shall keep counsel for plaintiffs, as well as other affected employee groups or their counsel, informed of the details of its progress in considering, evaluating, and adopting such procedures, and before any such procedure is put into effect the defendant shall so report to the Court and shall obtain and make available to counsel for plaintiffs all information regarding the likelihood that making promotions under the new procedure will result in adverse impact against African-Americans or Hispanic-Americans, and all information regarding the job-relatedness of the procedure and its consistency with business necessity.

38. Plaintiffs may make comments and suggestions to the defendant regarding such an alternative selection procedure, through their counsel or by themselves, but shall not be bound by any such comment or suggestion, and shall remain free to challenge the new procedure herein in the event that it has adverse impact against African-Americans or Hispanic-Americans in practice, unless plaintiffs and the defendant enter into a formal agreement and stipulation to that effect, which is submitted to the Court for approval and which is approved by the Court. Other affected employee groups may also make comments and suggestions.

H. Attorneys' Fees and Costs

39. (a) The City shall pay the reasonable attorneys' fees, costs and expenses, in an amount to be negotiated by the parties or determined by the Court, for all services performed by the Law-

yers' Committee for Civil Rights Under Law, by co-counsel, and by all attorneys and paralegals employed by them, in this case and in connection with plaintiffs' effort to intervene in the *Comeaux* and *Kelley* litigation, and for all other reasonable services performed and expenses incurred through the conclusion of all judicial proceedings on the grant of final approval to the Consent Decree and/or the propriety of the relief provided, including the defense of such relief against collateral attack. The parties shall attempt to negotiate in good faith over the amount of such recovery.

(b) The procedure for resolving fee claims as between the plaintiffs and the City is that counsel for plaintiffs shall informally submit to the defendant their claim for attorneys' fees and expenses, with supporting breakdowns. Within thirty days after the receipt of this submission, or within such further time as the plaintiffs and the defendant may informally agree, the defendant shall provide its response, which shall include (1) an itemized list of each of its objections to the submission, if any, indicating the particular items to which it objects and the reasons for the objection; (2) its proposed resolution of each objection; and (3) the amount which it does not contest, and contends would be a reasonable amount for the award of attorneys' fees and expenses herein. The defendant shall forthwith pay the uncontested amount. In the event that the amount of fees and expenses is litigated and plaintiffs recover an amount additional to the uncontested amount, plaintiffs shall also recover prejudgment interest on the amount of their recovery, at the rate of 10% per annum, from the thirtieth day after the receipt of plaintiffs' submission until the date of payment of the amount recovered.

40. (a) The City shall pay the reasonable attorneys' fees up to a maximum of \$ 20,000 annually, plus costs and expenses (including reasonable expert fees in the amounts actually charged to counsel for plaintiffs), of plaintiffs for future services in monitoring the defendants' compliance with this Consent Decree. Plaintiffs shall have the right to seek relief from this limit in the

discretion of the Court, in the event of a substantial failure by the City to comply with the provisions of this Consent Decree or a substantial effort required in connection with a proposed alternative selection procedure.

(b) The procedure and mechanism described in ¶ 39(b) shall be applied to awards of attorneys' fees under ¶ 40(a) for monitoring compliance with the Consent Decree. Plaintiffs shall decide when to submit their statements.

I. Reporting and Record-Keeping

41. At quarterly intervals after the effective date of this Consent Decree, the City shall report to plaintiffs on the steps it has taken to fulfill the provisions of this Consent Decree, including the name of each promotee and the date of each promotion to the ranks of Sergeant and Lieutenant.

42. With respect to each examination for Sergeant and Lieutenant within the ten-year period after the grant of final approval of this Consent Decree, promptly after the completion of any proceeding on the protest of the scoring of any item under the City's normal civil service procedures or any alternative procedures, the City shall provide counsel for plaintiffs with the following information:

a. a computer-readable data file containing the name, race, seniority points, score on each part of the promotional procedure, and scored answers to each examination item (correct or incorrect);

b. the final rank-ordered register of persons passing the test, showing the final written score, any assessment center score, seniority points, total score, rank (if any), and race of each test-taker. Persons failing the test shall be listed alphabetically.

c. Plaintiffs may make reasonable requests of the City for further information which would be helpful in determining any question of compliance with the Consent Decree, or which would assist in achieving its goals.

J. Retention of Jurisdiction, and Duration of the Consent Decree

43. This case shall be dismissed as settled, subject to the parties' rights of appeal and to any remand proceedings required by a superior court. In the event of any subsequent dispute among the parties as to any of the matters resolved by this Consent Decree, this case shall upon motion be automatically reinstated on the docket of this Court as an active case, until such matter shall have been resolved.

44. The provisions of the Consent Decree shall be in force for ten years after the conclusion of all judicial proceedings on the grant of final approval to the Consent Decree and/or the propriety of the relief provided. Those portions of the Consent Decree that allow a deviation from the requirements of The Fire and Police Civil Service Act, Texas Local Government Code chapter 143, as amended, may continue to be utilized for a maximum period of ten years unless extended on motion of any party for good cause shown, provided that the expiration of the ten-year period shall not limit the life of a promotional register under ¶¶ 35(e) above if the examination leading to that register was administered during the ten-year period. The period for retention of jurisdiction and/or continuation of these Consent Decree provisions may in the discretion of the Court be extended on motion by any party for good cause shown.

K. The Former Log-Linear Analysis

45. The form of proposed Consent Decree originally presented to the Court and given preliminary approval contained provisions for a log-linear analysis of test results, to identify biased test questions. All parties agreed to end the use of log-linear analysis and to substitute for that form

of relief an additional six months' life, to a total of thirty months, for promotional registers for the ranks of Sergeant and Lieutenant. The Court approved a Consent Order to that effect on November 24, 1997.

46. Only three tests were subject to log-linear analysis: the 1993 Sergeant examination, the 1994 Lieutenant examination, and the 1995 Sergeant examination.

a. The 1993 Sergeant examination resulted in 94 promotions, and all of the promotees passed the original version of the test prior to log-linear analysis.

b. The 1994 Lieutenant examination resulted in 12 promotions, and all of the promotees passed the original version of the test prior to log-linear analysis.

c. The 1995 Sergeant examination resulted in 57 promotions, and all of the promotees passed the original version of the test without log-linear analysis.

47. There shall be no changes in past promotions or rank seniority as a result of the previous use of log-linear analysis.

L. Interim Promotions

48. Pursuant to the Interim Order of February 5, 1997, the parties estimate that approximately 120 acting promotions have been made from promotional registers, and another 37 acting remedial promotions have been made. These promotions shall be made permanent, and the promotees shall be considered in all respects as if they had received permanent regular promotions or permanent remedial promotions, except for purposes of retrospective pension contributions. The City shall not be responsible for any additional payments to fund the promotees' pension benefits for this period, if any.

49. In the event that the grant of final approval to the Consent Decree is reversed on appeal, all promotions based on promotional registers that complied with the provisions of the Consent

Decree, but did not comply with the provisions of State law, and all remedial promotions under this Consent Decree, shall be undone, and all such promotees shall be demoted to their prior ranks, regardless of whether the promotions were permanent or acting, unless all parties present an agreed proposal for a different course of action.

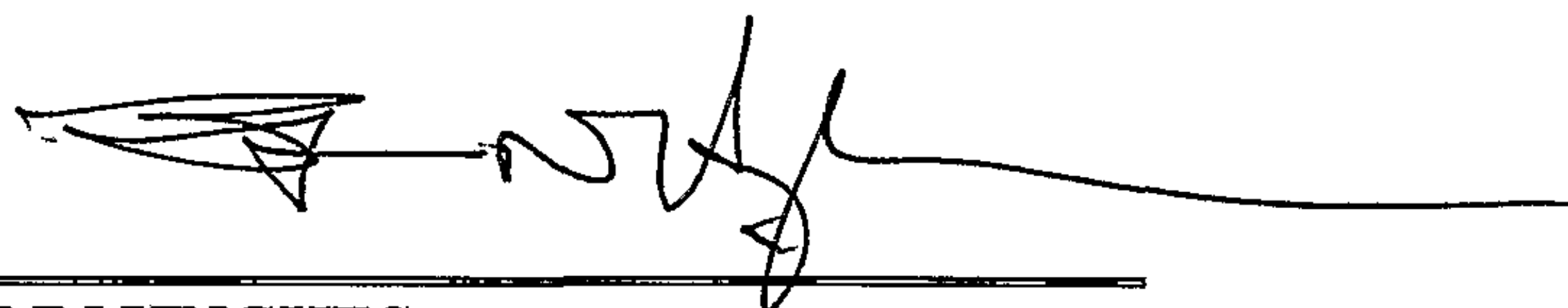
N. Pending motions

50. All outstanding motions are denied as moot.

M. Final Grant of Approval

51. The Court grants final approval to this modified form of the Consent Decree.

Signed at Houston, Texas, March 30, 2001.

A handwritten signature in black ink, appearing to read "Lynn Hughes", is written over a horizontal line. The signature is stylized and extends to the right of the line.

LYNN HUGHES
United States District Judge

WE SO STIPULATE, AND WE ASK FOR THIS:

Richard T. Seymour

RICHARD T. SEYMOUR

Teresa A. Ferrante

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