



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Consent Decrees

Labor and Employment Law Program

2-12-2009

U.S v. City of Indianapolis

Richard L. Young

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/condec>

Thank you for downloading this resource, provided by the ILR School's Labor and Employment Law Program. [Please help support our student research fellowship program with a gift to the Legal Repositories!](#)

This Article is brought to you for free and open access by the Labor and Employment Law Program at DigitalCommons@ILR. It has been accepted for inclusion in Consent Decrees by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

U.S v. City of Indianapolis

Keywords

U.S, City of Indianapolis, 1:07-CV-897, Consent Decree, Hiring, Promotion, Disparate Treatment, Female, Sex, Other, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES,

Plaintiff,

v.

No. 1:07-CV-897-DFH-WTL

CITY OF INDIANAPOLIS,

Defendant.

Consolidated with
No. 1:78-CV-388-RLY-WGH &
No. 1:05-CV-1220-LJM-JMS

CONSENT DECREE IN RESOLUTION OF SUIT

This action was brought by the United States against the City of Indianapolis, Indiana (the “City”), to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 2000e, *et seq.* This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5, 28 U.S.C. § 1345 and 28 U.S.C. § 1331.

In this litigation, the United States alleges that the City violated Title VII by discriminating in promotions made in its Police Department on the basis of race and/or sex. The City denies that it violated Title VII, and, in agreeing to the entry of this Consent Decree, does not admit to discrimination in any form. The City maintains that it has been and remains committed to equal employment opportunity, including the promotion of qualified officers in the Police Department. As demonstration of its commitment to equal employment opportunity, the City notes its long history of compliance with and satisfaction of a pair of Consent Decrees and an Addendum concerning hiring and promotion of blacks and the hiring of women in both the City’s Police and Fire Departments. However, in order to avoid the risk, cost and distraction of

further litigation, and to resolve additional claims of discrimination that have arisen in the wake of this litigation, the City agrees and consents to the entry of this Consent Decree to resolve the matters addressed herein.

BACKGROUND

Nearly thirty years ago, the United States and the City agreed and consented to, and the Court approved and entered in 1978, 1979, and 1981, respectively, two Consent Decrees and an Addendum concerning the hiring and promotion of black and the hiring of women police officers and firefighters in the City's Police and Fire Departments. By 2005, the City had fully complied with the goals and purposes of those consent agreements. In related litigation that is being resolved separately, the United States and the City have agreed that those Consent Decrees and Addendum have served their purpose and are no longer necessary because of the City's demonstrated history of compliance and achievement in satisfying the goals and purposes of those consent agreements. The City has maintained throughout the litigation, and continues to maintain, that it is committed to equal employment opportunity, including in its Police Department, and that diversity is important.

In 2005 and 2006, eight (8) police officers in the City's Police Department filed charges of discrimination with the Equal Employment Opportunity Commission (the "EEOC"), alleging that the City discriminated against them based on their race (white) and/or sex (male) in delaying or denying their promotions to the merit ranks of Sergeant and Lieutenant in 2005. In answering the charges, the City denied discriminating against the police officers.

After investigating the charges, the EEOC issued determinations in June, August and September 2006, concluding there was reasonable cause to believe that the City had

discriminated against the charging parties and similarly situated police officers in violation of Title VII. With respect to the six (6) charges filed by police officers who had sought promotions to the merit rank of Sergeant, the EEOC's determinations found cause on the basis of both race and sex. And, with respect to the two (2) charges filed by police officers who had sought promotions to the merit rank of Lieutenant, the EEOC's determinations found cause on the basis of sex alone. The EEOC then referred these cause determinations to the Department of Justice pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, after conciliation efforts failed.

The Department of Justice received the EEOC charge referrals in August and September 2006, and initiated a supplemental investigation concerning the allegations. In late December 2006, the Department of Justice learned that the City also had made promotions to the merit rank of Captain earlier that month, and that similar allegations were being made with respect to those promotions. As a result, and because its supplemental investigation was ongoing, the Department of Justice added these allegations with respect to the merit rank of Captain to those it was already investigating with respect to the merit ranks of Sergeant and Lieutenant based on the EEOC referrals. Based on the supplemental investigation, which included interviewing numerous witnesses and reviewing substantial personnel information, the Department of Justice concluded that the City had violated Title VII, by discriminating based on race and/or sex in making Police Department promotions to the merit ranks of Sergeant and Lieutenant in 2005, and to the merit rank of Captain in 2006. Later, in March 2008, during the pendency of this action, the United States learned of further similar allegations of discrimination concerning promotions made by the City to the merit ranks of Sergeant and Lieutenant in the Police Department from new eligibility lists. The United States, once again, investigated the allegations

because they were related and this action was ongoing, and the City defended the promotions by offering defenses against any potential Title VII claims and maintaining that it did not discriminate in any form. The EEOC has not made any cause determination with respect to the 2008 allegations, but, based on its review, the United States concluded that these promotions also violated Title VII.

The United States filed its Complaint pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, on July 11, 2007, alleging discrimination against eight (8) named police officers who had sought promotions in 2005, as well as two classes of similarly situated individuals. On September 10, 2007, the City filed its Answer, in which the City admitted certain facts, but continued to deny that it had violated Title VII in any form. The City also raised a number of affirmative defenses to the United States' claims, including that its promotions practices complied with the consent agreements entered in 1978 and 1979.

On October 22, 2007, the EEOC issued determinations on the three (3) charges of discrimination filed by police officers who sought promotions to the merit rank of Captain in the Police Department. The EEOC concluded there was reasonable cause to believe that the City had discriminated against the charging parties in violation of Title VII on the basis of their race (white). The EEOC then referred these cause determinations to the Department of Justice pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, after conciliation efforts failed.

In this litigation, therefore, the United States alleges that the City violated Title VII by discriminating in promotions in its Police Department on the basis of race and/or sex. The City continues to deny that it violated Title VII, and, in agreeing to the entry of this Consent Decree, does not admit to discrimination in any form. Rather, the City enters into this Consent Decree in

an effort to avoid the cost and distraction of further litigation and to resolve these matters.

Thus, the United States and the City, desiring that this action and the above-referenced allegations be settled by an appropriate Consent Decree, without the burden and risks of further protracted and contested litigation, agree to the jurisdiction of this Court over the parties and the subject-matter of this action and the above-referenced claims and allegations. Subject to the Court's approval of this Decree, the parties waive hearings and findings of fact and conclusions of law, and further agree to the entry of this Decree as final and binding on the parties, and their officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them, as to all issues raised in the United States' Complaint in this case.

In resolution of this action, the United States and the City hereby AGREE to, and the Court APPROVES, ENTERS and ORDERS, the following:

I. DEFINITIONS AND PARTIES

1. The parties to this Decree are the United States, by the Department of Justice, and the City of Indianapolis, Indiana.

2. "Backpay" refers to a monetary award that represents some or all of the wages that a Claimant would have earned up to the date of final approval and entry of this Decree if the Claimant had been, or had been earlier, promoted.

3. The "City" refers to the City of Indianapolis, Indiana, which is a consolidated city and political subdivision created pursuant to the laws of the State of Indiana.

4. "Claimant" refers to an individual who satisfies the eligibility requirements for individual remedial relief pursuant to Paragraph 15, *infra*, and who is identified in Paragraph 17,

infra.

5. “Date of final approval and entry” of the Decree refers to the date on which the Court orders the entry of this Decree.

6. “Day” or “days” refers to calendar, not business, days.

7. “Frontpay” refers to a monetary award that represents some or all of the wages that a Claimant would have earned from the date of final approval and entry of this Decree up to the date the Claimant is promoted pursuant to Paragraph 22, *infra.*

8. “Individual remedial relief ” refers to any promotion, backpay, frontpay and/or retroactive seniority that may be provided pursuant to this Decree to Claimants who, as a result of the City’s alleged race- and/or sex-based promotional practices, were not promoted or not timely promoted to the merit rank in the Police Department that they sought (*i.e.*, Sergeant, Lieutenant or Captain).

9. The “Police Department” refers to the Metropolitan Law Enforcement Agency, a/k/a the Indianapolis Metropolitan Police Department, and the former Indianapolis Police Department, through which the City employs, or employed, police officers. Section 279-102(c) of the Revised Code of the Consolidated City and County designated the Metropolitan Law Enforcement Agency, a/k/a the Indianapolis Metropolitan Police Department, as the legal successor-in-interest to the former Indianapolis Police Department.

10. “Retroactive seniority” refers to a seniority award that represents some or all of the seniority that a Claimant would have earned for the promotion sought if the Claimant had been, or had been earlier, promoted. All retroactive seniority awarded pursuant to this Decree is seniority for all purposes, including, but not limited to, any time-in-service requirements for

eligibility for promotion, as well as for pension benefits.

11. “Title VII” refers to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

II. PURPOSES OF THIS DECREE

12. The purposes of this Decree are to ensure that:

(a) the City makes promotions in the Police Department consistent with Title VII, and free of discrimination on the basis of race or sex; and

(b) the City provides remedial relief, including, as appropriate, promotions, backpay, frontpay and retroactive seniority, to those individuals whose promotions in the Police Department were allegedly delayed or denied on the basis of their race and/or sex, as referenced in this Decree.

III. GENERAL INJUNCTIVE RELIEF

13. The City, its agents, officials, supervisors, employees and successors, and all persons acting on their behalf or in active concert or participation with them, are enjoined from:

(a) engaging in or agreeing to any act or practice that discriminates on the basis of race or sex, in violation of Title VII, with respect to promotions in the Police Department; and

(b) retaliating against, or in any way adversely affecting the terms and conditions of employment of, any person because that person has engaged in practices protected under Title VII, *see, e.g.*, 42 U.S.C. § 2000e-3(a), including, but not limited to, cooperating with the United States’ investigation of the City and the Police Department, participating in the litigation of this case or seeking or receiving individual remedial

relief pursuant to this Decree.

IV. INDIVIDUAL REMEDIAL RELIEF

14. This Decree provides specific individual remedial relief to Claimants, including, as appropriate, promotions, backpay, frontpay and retroactive seniority.

15. The Claimants who are eligible for individual remedial relief pursuant to this Decree are those:

(a) who sought and were qualified for promotion to the merit ranks of Sergeant and Lieutenant in the Police Department in 2005 and 2008, and the merit rank of Captain in the Police Department in 2006, as defined by the respective eligibility lists that were certified and from which promotions were made in those years; and

(b) whose promotions were allegedly delayed or denied on the basis of their race and/or sex at those relevant times.

16. Although the parties disagree as to whether the facts stated below constitute unlawful employment practices under Title VII, the parties agree that the facts stated below are accurate:

(a) With respect to promotions to the merit rank of Sergeant in the Police Department in 2005:

(1) On January 20, 2005, the City promoted fifteen (15) police officers to the merit rank of Sergeant, including a white female, three (3) black females and a black male who all ranked lower than 26th on the eligibility list then in effect for such promotions. Each of the other ten (10) police officers promoted to the merit rank of Sergeant on January 20, 2005, ranked among the top fifteen (15)

places on the eligibility list then in effect for such promotions.

(2) On August 24, 2005, the City promoted two (2) police officers to the merit rank of Sergeant from the same eligibility list that was used on January 20, 2005. On September 15, 2005, the City promoted three (3) police officers to the merit rank of Sergeant from the same eligibility list that was used on January 20 and August 24, 2005. On December 15, 2005, the City promoted six (6) police officers to the merit rank of Sergeant from the same eligibility list that was used on January 20, August 24 and September 15, 2005. The promotions to the merit rank of Sergeant that were made on August 24, September 15 and December 15, 2005, were made in the rank order of the candidates who remained on the eligibility list at those times.

(3) Thus, in 2005, the City promoted a total of twenty-six (26) police officers to the merit rank of Sergeant in the Police Department from the eligibility list, including five (5) black and/or female police officers who were promoted out of rank order on January 20, 2005.

(4) The United States alleges and, solely for the purposes of this Decree, the City does not contest that, as a result of the City's promotions of black and/or female police officers ranked lower than 26th on the eligibility list to the merit rank of Sergeant in 2005, the promotions of the following individuals, who ranked higher on the eligibility list, were delayed: (i) Mark E. Fagan, who ranked 9th on the eligibility list; (ii) Brian D. Churchill, who ranked 10th on the eligibility list; (iii) Scott A. Hessong, who ranked 12th on the eligibility list; (iv)

Benjamin D. Hunter, who ranked 13th on the eligibility list; (v) Richard P. Riddle, who ranked 14th on the eligibility list; (vi) Edward A. Bruce, who ranked 16th on the eligibility list; (vii) Joseph S. Sherron, who ranked 17th on the eligibility list; (viii) Christopher L. Bailey, who ranked 18th on the eligibility list; (ix) Brandon C. Laser, who ranked 19th on the eligibility list; (x) Lawrence A. Wheeler, who ranked 20th on the eligibility list; and (xi) Daniel R. Green, who ranked 24th on the eligibility list.

(5) The United States also alleges and, solely for the purposes of this Decree, the City also does not contest that, as a result of the City's promotions of black and/or female police officers ranked lower than 26th on the eligibility list to the merit rank of Sergeant in 2005, the promotions of the following individuals, who ranked higher on the eligibility list, were denied, and these individuals have not since been promoted: (i) Brent E. Hendricks, who ranked 22nd on the eligibility list; (ii) Brent D. Miller, who ranked 23rd on the eligibility list; (iii) Jeffrey G. Smith, who ranked 25th on the eligibility list; and (iv) Roger T. Suesz, who ranked 26th on the eligibility list.

(6) On March 5, 2008, after the establishment of a new eligibility list, the City promoted nine (9) police officers to the merit rank of Sergeant, including a white female and a black male who both ranked lower than 9th on that new eligibility list then in effect for such promotions. With the exception of one (1) police officer (white male) whom the City represents was promoted to the merit rank of Sergeant to fulfill a statutory provision for the promotion of former

Marion County Sheriffs Department personnel who had been merged into the Police Department and who ranked 17th on the eligibility list, each of the other six (6) police officers promoted to the merit rank of Sergeant on March 5, 2008, ranked among the top nine (9) places on the new eligibility list then in effect for such promotions.

(7) Thus, from January 1 through April 11, 2008, the City promoted a total of nine (9) police officers to the merit rank of Sergeant in the Police Department from the newly established eligibility list, including a white female and a black male police officer who were both promoted out of rank order on March 5, 2008.

(8) The United States alleges and, solely for the purposes of this Decree, the City does not contest that, as a result of the City's promotions of black and/or female police officers ranked lower than 9th on the newly established eligibility list to the merit rank of Sergeant in 2008, the promotions of the following individuals, who ranked higher on the eligibility list, were denied, and these individuals have not since been promoted: (i) Jeffrey Augustinovicz, who ranked 7th on the eligibility list; and (ii) Jonathan R. Baker, who ranked 8th on the eligibility list.

(b) With respect to promotions to the merit rank of Lieutenant in the Police Department in 2005:

(1) On January 20, 2005, the City promoted eleven (11) police officers to the merit rank of Lieutenant, including a white female and a black male who

both ranked lower than 12th on the eligibility list then in effect for such promotions. Each of the other nine (9) police officers promoted to the merit rank of Lieutenant on January 20, 2005, ranked among the top eleven (11) places on the eligibility list then in effect for such promotions.

(2) On December 15, 2005, the City promoted one (1) police officer to the merit rank of Lieutenant from the same eligibility list that was used on January 20, 2005. The promotion to the merit rank of Lieutenant that was made on December 15, 2005, was made in the rank order of the candidates who remained on the eligibility list at that time.

(3) Thus, in 2005, the City promoted a total of twelve (12) police officers to the merit rank of Lieutenant in the Police Department from the eligibility list, including a female police officer who was promoted out of rank order on January 20, 2005.

(4) The United States alleges and, solely for the purposes of this Decree, the City does not contest that, as a result of the City's promotion of a female police officer ranked lower than 12th on the eligibility list to the merit rank of Lieutenant in 2005, the promotions of the following individuals, who ranked higher on the eligibility list, were delayed: (i) Robert M. McClary, who ranked 9th on the eligibility list; and (ii) Thomas I. Black, who ranked 10th on the eligibility list.

(5) On March 5, 2008, after the establishment of a new eligibility list, the City promoted nine (9) police officers to the merit rank of Lieutenant,

including a black female who ranked lower than 9th on that new eligibility list then in effect for such promotions. Each of the other eight (8) police officers promoted to the merit rank of Lieutenant on March 5, 2008, ranked among the top nine (9) places on the new eligibility list then in effect for such promotions.

(6) On April 2, 2008, the City promoted three (3) police officers to the merit rank of Lieutenant from the same eligibility list that was used on March 5, 2008. The promotions to the merit rank of Lieutenant that were made on April 2, 2008, were made in the rank order of the candidates who remained on the eligibility list at that time.

(7) Thus, from January 1 through April 11, 2008, the City promoted a total of twelve (12) police officers to the merit rank of Lieutenant in the Police Department from the newly established eligibility list, including a total of nine (9) promotions on March 5, 2008, which included a black female police officer who was promoted out of rank order on March 5, 2008.

(8) The United States alleges and, solely for the purposes of this Decree, the City does not contest that, as a result of the City's promotion of a black female police officer ranked lower than 9th on the newly established eligibility list to the merit rank of Sergeant on March 5, 2008, the promotion of the following individual, who ranked higher on the eligibility list, was delayed: (i) Thomas J. Kern, who ranked 8th on the eligibility list.

(c) With respect to promotions to the merit rank of Captain in the then-merging Police Department in 2006:

(1) On December 19, 2006, the City promoted eleven (11) police officers in the then-merging Police Department to the merit rank of Captain, including three (3) black males who all ranked lower than 11th on the eligibility list then in effect for such promotions. With the exception of one (1) police officer (white male) whom the City represents was promoted to the merit rank of Captain in order to fulfill a specialized and required need and who ranked 13th on the eligibility list, each of the other seven (7) police officers promoted to the merit rank of Captain on December 19, 2006, ranked among the top eleven (11) places on the eligibility list then in effect for such promotions.

(2) Thus, in 2006, the City promoted a total of eleven (11) police officers to the merit rank of Captain in the then-merging Police Department from the eligibility list, including three (3) black police officers who were promoted out of rank order on December 19, 2006.

(3) The United States alleges and, solely for the purposes of this Decree, the City does not contest that, as a result of the City's promotion of black police officers ranked lower than 11th on the eligibility list to the merit rank of Captain in 2006, the promotions of the following individuals, who ranked higher on the eligibility list, were delayed: (i) David E. Hensley, who ranked 8th on the eligibility list; (ii) Joseph W. Finch, who ranked 9th on the eligibility list; and (iii) Peter W. Mungovan, who ranked 10th on the eligibility list.

17. Although the City maintains that it did not violate Title VII and denies that it discriminated in any form, the parties agree that the individuals identified below are the

Claimants who are eligible, *see* Paragraph 15, *supra*, for individual remedial relief provided pursuant to this Decree, and further agree that each Claimant identified below remains, subject to the release requirement of Paragraph 30, *infra*, qualified for and eligible to receive any and all individual remedial relief provided pursuant to this Decree:

(a) Mark E. Fagan, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(b) Brian D. Churchill, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(c) Scott A. Hessong, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(d) Benjamin D. Hunter, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(e) Richard P. Riddle, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(f) Edward A. Bruce, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(g) Joseph S. Sherron, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(h) Christopher L. Bailey, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(i) Brandon C. Laser, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(j) Lawrence A. Wheeler, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(k) Daniel R. Green, individual remedial relief for his allegedly delayed promotion to the merit rank of Sergeant;

(l) Brent E. Hendricks, individual remedial relief for his allegedly denied promotion to the merit rank of Sergeant;

(m) Brent D. Miller, individual remedial relief for his allegedly denied promotion to the merit rank of Sergeant;

(n) Jeffrey G. Smith, individual remedial relief for his allegedly denied promotion to the merit rank of Sergeant;

(o) Roger T. Suesz, individual remedial relief for his allegedly denied promotion to the merit rank of Sergeant;

(p) Jeffrey Augustinovicz, individual remedial relief for his allegedly denied promotion to the merit rank of Sergeant;

(q) Jonathan R. Baker, individual remedial relief for his allegedly denied promotion to the merit rank of Sergeant;

(r) Robert M. McClary, individual remedial relief for his allegedly delayed promotion to the merit rank of Lieutenant;

(s) Thomas I. Black, individual remedial relief for his allegedly delayed promotion to the merit rank of Lieutenant;

(t) Thomas J. Kern, individual remedial relief for his allegedly delayed promotion to the merit rank of Lieutenant;

(u) David E. Hensley, individual remedial relief for his allegedly delayed promotion to the merit rank of Captain;

(v) Joseph W. Finch, individual remedial relief for his allegedly delayed promotion to the merit rank of Captain; and

(w) Peter W. Mungovan, individual remedial relief for his allegedly delayed promotion to the merit rank of Captain.

18. Subject to the release requirement of Paragraph 30, *infra*, within sixty (60) days after the date of final approval and entry of this Decree, the City shall send, via first class mail with return receipt requested, checks representing backpay and prejudgment interest made payable to each Claimant listed below, in the amount designated below for each Claimant less withholdings appropriate pursuant to Paragraph 19, *infra*:

(a) Mark E. Fagan, in the amount of \$4,208.20 (comprised of \$3,354.48 in backpay, and \$853.72 in prejudgment interest);

(b) Brian D. Churchill, in the amount of \$4,143.16 (comprised of \$3,302.64 in backpay, and \$840.52 in prejudgment interest);

(c) Scott A. Hessong, in the amount of \$4,558.40 (comprised of \$3,639.02 in backpay, and \$919.38 in prejudgment interest);

(d) Benjamin D. Hunter, in the amount of \$4,558.40 (comprised of \$3,639.02 in backpay, and \$919.38 in prejudgment interest);

(e) Richard P. Riddle, in the amount of \$4,558.40 (comprised of \$3,639.02 in backpay, and \$919.38 in prejudgment interest);

(f) Edward A. Bruce, in the amount of \$2,108.47 (comprised of \$1,727.77 in

backpay, and \$380.70 in prejudgment interest);

(g) Joseph S. Sherron, in the amount of \$2,108.47 (comprised of \$1,727.77 in backpay, and \$380.70 in prejudgment interest);

(h) Christopher L. Bailey, in the amount of \$1,693.23 (comprised of \$1,391.39 in backpay, and \$301.84 in prejudgment interest);

(i) Brandon C. Laser, in the amount of \$1,693.23 (comprised of \$1,391.39 in backpay, and \$301.84 in prejudgment interest);

(j) Lawrence A. Wheeler, in the amount of \$1,719.81 (comprised of \$1,413.23 in backpay, and \$306.58 in prejudgment interest);

(k) Daniel R. Green, in the amount of \$14,632.52 (comprised of \$13,150.89 in backpay, and \$1,481.63 in prejudgment interest);

(l) Brent E. Hendricks, in the amount of \$18,158.29 (comprised of \$16,645.29 in backpay, and \$1,513.00 in prejudgment interest);

(m) Brent D. Miller, in the amount of \$18,158.29 (comprised of \$16,645.29 in backpay, and \$1,513.00 in prejudgment interest);

(n) Jeffrey G. Smith, in the amount of \$18,163.24 (comprised of \$16,649.37 in backpay, and \$1,513.87 in prejudgment interest);

(o) Roger T. Suesz, in the amount of \$18,158.29 (comprised of \$16,645.29 in backpay, and \$1,513.00 in prejudgment interest);

(p) Jeffrey Augustinovicz, in the amount of \$3,525.77 (comprised of \$3,494.40 in backpay, and \$31.37 in prejudgment interest);

(q) Jonathan R. Baker, in the amount of \$3,525.77 (comprised of \$3,494.40 in

backpay, and \$31.37 in prejudgment interest);

(r) Robert M. McClary, in the amount of \$6,844.50 (comprised of \$5,507.46 in backpay, and \$1,337.04 in prejudgment interest);

(s) Thomas I. Black, in the amount of \$15,697.42 (comprised of \$14,107.49 in backpay, and \$1,589.93 in prejudgment interest);

(t) Thomas J. Kern, in the amount of \$513.08 (comprised of \$499.52 in backpay, and \$13.56 in prejudgment interest);

(u) David E. Hensley, in the amount of \$9,395.03 (comprised of \$8,773.85 in backpay, and \$621.18 in prejudgment interest);

(v) Joseph W. Finch, in the amount of \$9,395.03 (comprised of \$8,773.85 in backpay, and \$621.18 in prejudgment interest); and

(w) Peter W. Mungovan, in the amount of \$9,395.03 (comprised of \$8,773.85 in backpay, and \$621.18 in prejudgment interest).

19. The City shall withhold from the backpay and frontpay (but not the prejudgment interest) portion of each payment listed in Paragraph 18, *supra*, and Paragraph 23, *infra*, the amount required by applicable federal and state income tax laws. Because police officers employed by the City in its Police Department do not participate in the federal Social Security fund, although they do participate in the federal Medicare/Medicaid funds, for each payment listed in Paragraph 18, *supra*, and Paragraph 23, *infra*, the City shall not withhold the amount required by applicable federal and state laws with respect to Social Security withholding, but the City shall withhold the amount required by applicable federal and state laws with respect to Medicare/Medicaid withholding.

20. Because police officers employed by the City in its Police Department do not participate in the federal Social Security fund, although they do participate in the federal Medicare/Medicaid funds, for each payment listed in Paragraph 18, *supra*, and Paragraph 23, *infra*, the City shall not pay the appropriate employer's contribution to the Social Security fund that would have been paid by the City, but the City shall pay the appropriate employer's contribution to the Medicare/Medicaid fund that would have been paid by the City.

21. Within thirty (30) days after the City has made the payments representing backpay and prejudgment interest less withholdings, *see* Paragraphs 18 and 19, *supra*, the City shall so notify the United States in writing, and shall provide the United States with a list detailing:

(a) the amount of the check made payable and sent via first class mail with return receipt requested to each Claimant;

(b) the amount withheld from each Claimant's check pursuant to federal and state income tax laws; and

(c) the amount paid by the City for the employer's contribution to the Social Security and/or Medicare/Medicaid fund for each Claimant.

22. Subject to the release requirement of Paragraph 30, *infra*, within sixty (60) days after the date of final approval and entry of this Decree, and before making any other promotions to the merit rank of Sergeant in the Police Department, the City shall promote each Claimant listed below to the merit rank of Sergeant, and if all such promotions cannot be made on the same date, then the City shall make such promotions in the order in which the Claimants are listed below, beginning with (a) and ending with (f):

- (a) Brent E. Hendricks,
- (b) Brent D. Miller,
- (c) Jeffrey G. Smith,
- (d) Roger T. Suesz,
- (e) Jeffrey Augustinovicz, and
- (f) Jonathan R. Baker.

23. Subject to the release requirement of Paragraph 30, *infra*, within sixty (60) days of the date of final approval and entry of this Decree, the City shall mail, via regular first class mail with return receipt requested, checks representing frontpay made payable to each Claimant listed below, in the amount calculated using the formula designated below for each Claimant less withholdings appropriate pursuant to Paragraph 19, *supra*:

(a) Brent E. Hendricks, in the amount calculated by multiplying the number of days from the date of final approval and entry of this Decree to the date of his promotion pursuant to Paragraph 22, *supra*, by \$16.64, representing the daily difference in salary between a Patrol Officer and a Sergeant;

(b) Brent D. Miller, in the amount calculated by multiplying the number of days from the date of final approval and entry of this Decree to the date of his promotion pursuant to Paragraph 22, *supra*, by \$16.64, representing the daily difference in salary between a Patrol Officer and a Sergeant;

(c) Jeffrey G. Smith, in the amount calculated by multiplying the number of days from the date of final approval and entry of this Decree to the date of his promotion pursuant to Paragraph 22, *supra*, by \$16.64, representing the daily difference in salary

between a Patrol Officer and a Sergeant;

(d) Roger T. Suesz, in the amount calculated by multiplying the number of days from the date of final approval and entry of this Decree to the date of his promotion pursuant to Paragraph 22, *supra*, by \$16.64, representing the daily difference in salary between a Patrol Officer and a Sergeant;

(e) Jeffrey Augustinovicz, in the amount calculated by multiplying the number of days from the date of final approval and entry of this Decree to the date of his promotion pursuant to Paragraph 22, *supra*, by \$16.64, representing the daily difference in salary between a Patrol Officer and a Sergeant; and

(f) Jonathan R. Baker, in the amount calculated by multiplying the number of days from the date of final approval and entry of this Decree to the date of his promotion pursuant to Paragraph 22, *supra*, by \$16.64, representing the daily difference in salary between a Patrol Officer and a Sergeant.

24. Within thirty (30) days after the City has made the payments representing frontpay less withholdings, *see* Paragraphs 23 and 19, *supra*, the City shall so notify the United States in writing, and shall provide the United States with a list detailing:

(a) the amount of the check made payable and sent via first class mail with return receipt requested to each Claimant;

(b) the amount withheld from each Claimant's check pursuant to federal and state income tax laws; and

(c) the amount paid by the City for the employer's contribution to the Social Security and/or Medicare/Medicaid fund for each Claimant.

25. Subject to the release requirement of Paragraph 30, *infra*, within sixty (60) days of the date of final approval and entry of this Decree, the City shall credit each Claimant listed below with retroactive seniority for the merit rank designated below back to the date designated below for each Claimant:

(a) Mark E. Fagan, retroactive seniority for the merit rank of Sergeant back to January 15, 2005;

(b) Brian D. Churchill, retroactive seniority for the merit rank of Sergeant back to January 15, 2005;

(c) Scott A. Hessong, retroactive seniority for the merit rank of Sergeant back to January 15, 2005;

(d) Benjamin D. Hunter, retroactive seniority for the merit rank of Sergeant back to January 15, 2005;

(e) Richard P. Riddle, retroactive seniority for the merit rank of Sergeant back to January 15, 2005;

(f) Edward A. Bruce, retroactive seniority for the merit rank of Sergeant back to August 24, 2005;

(g) Joseph S. Sherron, retroactive seniority for the merit rank of Sergeant back to August 24, 2005;

(h) Christopher L. Bailey, retroactive seniority for the merit rank of Sergeant back to September 15, 2005;

(i) Brandon C. Laser, retroactive seniority for the merit rank of Sergeant back to September 15, 2005;

(j) Lawrence A. Wheeler, retroactive seniority for the merit rank of Sergeant back to September 15, 2005;

(k) Daniel R. Green, retroactive seniority for the merit rank of Sergeant back to December 15, 2005;

(l) Brent E. Hendricks, retroactive seniority for the merit rank of Sergeant back to December 15, 2005;

(m) Brent D. Miller, retroactive seniority for the merit rank of Sergeant back to December 15, 2005;

(n) Jeffrey G. Smith, retroactive seniority for the merit rank of Sergeant back to December 15, 2005;

(o) Roger T. Suesz, retroactive seniority for the merit rank of Sergeant back to December 15, 2005;

(p) Jeffrey Augustinovicz, retroactive seniority for the merit rank of Sergeant back to March 5, 2008;

(q) Jonathan R. Baker, retroactive seniority for the merit rank of Sergeant back to March 5, 2008;

(r) Robert M. McClary, retroactive seniority for the merit rank of Lieutenant back to January 20, 2005;

(s) Thomas I. Black, retroactive seniority for the merit rank of Lieutenant back to December 15, 2005;

(t) Thomas J. Kern, retroactive seniority for the merit rank of Lieutenant back to March 5, 2008;

(u) David E. Hensley, retroactive seniority for the merit rank of Captain back to December 9, 2006;

(v) Joseph W. Finch, retroactive seniority for the merit rank of Captain back to December 9, 2006; and

(w) Peter W. Mungovan, retroactive seniority for the merit rank of Captain back to December 9, 2006.

26. Within ninety (90) days of the date on which the City satisfies all of its obligations under Paragraphs 18, 19, 20, 21, 22, 23, 24 and 25, *supra*, the City shall certify and notify the United States in writing that the City has fulfilled all of its obligations under those Paragraphs of this Decree. In making such certification and notification, the City shall include documents demonstrating its fulfillment of the obligations under Paragraphs 18, 19, 20, 21, 22, 23, 24 and 25, *supra*.

V. FAIRNESS HEARING

27. Upon provisional approval of this Decree, the Court will set a date for a fairness hearing to consider giving its final approval and to hear any objections filed by individuals affected by this Decree. The fairness hearing shall be held no less than sixty (60) days after provisional approval of this Consent Decree.

28. Within ten (10) days after the date of the Court's provisional approval of this Decree, the City shall provide written notice of the Court's provisional approval of this Decree to each of the Claimants listed in Paragraph 17, *supra*, and to all incumbent sworn personnel of the Police Department. The notice shall provide a description of the relief to be provided pursuant to this Decree, specify the date, time and place for the fairness hearing, and describe the

procedure for filing objections to the Decree. Notice for purposes of this Paragraph shall be by regular first class mail to each individual's last known address. An example of such notice is attached to this Decree as Appendix A.

VI. RELEASE OF CLAIMS

29. Within ten (10) days after the date of final approval and entry of this Decree, the United States shall mail to each of the Claimants listed in Paragraph 17, *supra*, a release of claims ("Release") in the form attached to this Decree as Appendix B, along with a copy of this Decree.

30. Any Claimant otherwise entitled to individual remedial relief pursuant to this Decree shall, to remain eligible for and obtain such individual remedial relief, sign the Release, have it notarized and return it to the City at the address set forth in Paragraph 38, *infra*. Any Claimant who does not return his signed and notarized Release to the City within thirty (30) days after the mailing of the Release, absent a showing of good cause, shall be deemed to have waived his entitlement to individual remedial relief pursuant to this Decree. The determination that a Claimant has shown good cause shall be within the sole discretion of the United States.

31. Within forty-five (45) days after the date of final approval and entry of this Decree, the City shall provide to the United States a copy of each Release that is returned to the City by a Claimant.

VII. DISPUTE RESOLUTION

32. The parties shall attempt to resolve informally any dispute that may arise under this Decree. If the parties are unable to resolve the dispute expeditiously, and after providing notice to the opposing party, any party may move the Court for a resolution of the disputed issue.

VIII. RECORD RETENTION, COMPLIANCE MONITORING AND REPORTING REQUIREMENTS

33. To the extent that the City is not already under a legal obligation to maintain such records, documents, data and information throughout the term of this Decree, and will not otherwise maintain such records, documents, data and information pursuant to routine personnel file maintenance policies, the City shall retain all of the following records, documents, data and information (including those in electronic form) during the term of this Decree:

(a) all applications or materials submitted for promotion to any sworn position within the Police Department, regardless of rank or title, as well as all records, documents, data and information related to the evaluation of applicants and the selection of applicants to be promoted;

(b) all records, documents, data and information related to written or oral complaints made by any applicant for employment or employee in the Police Department with respect to:

(1) discrimination in promotion on the basis of race or sex, or

(2) retaliation for complaining of, or participating in any proceedings involving a complaint of, such discrimination; and

(c) all records, documents, data and information related to the individual remedial relief provided to any Claimant pursuant to this Decree.

34. The United States may review compliance with this Decree at any time. Upon thirty (30) days written notice to the City, without further order of this Court, the United States shall have the right to inspect and copy any records, documents, data and information that are relevant to monitor the City's compliance with this Decree, including, but not limited to, those

retained pursuant to Paragraph 33, *supra*.

35. Additionally, the City agrees to submit the periodic reports listed below to the United States at the address set forth in Paragraph 37, *infra*, every six (6) months, detailing the City's efforts in furtherance of the objectives of this Decree for so long as this Decree remains in effect. Each semi-annual report shall contain the information for the period of time covered by the report.

(a) A list of the sworn personnel hired into the Police Department, identifying each such individual by name, race, sex, date of hire, rank, job assigned and salary.

(b) A list of the sworn personnel promoted within the Police Department, identifying each such individual by name, race, sex, date of promotion, promoted rank, job assigned and salary of both the promoted rank and the rank from which the individual was promoted.

(c) A list of the sworn personnel in the Police Department whose employment has been terminated, identifying each such individual by name, race, sex, date of hire, date(s) of any promotion(s), date of termination of employment and reason for such termination of employment.

(d) A list or chart showing the total number of sworn personnel in the Police Department, identified by race and sex, who are employed in each of the various ranks.

(e) Copies of all published policies for hiring into or promotion within the Police Department.

(f) A list or chart indicating by race, sex, rank, and unit assignment the number of grievances or complaints concerning race and/or sex discrimination filed by

sworn personnel in the Police Department.

(g) A list or chart indicating by race, sex, rank, and unit assignment the number of disciplinary actions brought against sworn personnel in the Police Department, including the type of violation involved, and the disposition of such disciplinary action.

(h) In the event of a challenge by the United States as to the lawfulness of examinations for hiring into and/or promotion within the Police Department, the City agrees to provide the Department of Justice with such examinations and all materials regarding their validity.

IX. MISCELLANEOUS PROVISIONS

36. The parties shall bear their own costs and attorney's fees in this action, except that the parties shall retain the right to seek costs and attorney's fees for any matter which, in the future, may arise under this Decree and require resolution by the Court.

37. Any records, documents, data and information required to be delivered pursuant to this Decree to the United States shall be sent to the attention of:

Lead Attorney, Indianapolis Police Department Case
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section—PHB 4th Floor
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

38. Any records, documents, data and information required to be delivered pursuant to this Decree to the City shall be sent to the attention of:

Corporation Counsel
City of Indianapolis
Office of Corporation Counsel
1601 City-County Building
200 E. Washington Street

X. JURISDICTION OF THE COURT

39. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be appropriate to implement the terms or relief provided in this Decree.

40. This Decree shall dissolve and this action shall be dismissed without further order of the Court at the end of two (2) years from the date of final approval and entry of this Decree, or ninety (90) days after the City has certified and notified the United States in writing, pursuant to Paragraph 26, *supra*, that City has fulfilled all of its obligations under Paragraphs 18, 19, 20, 21, 22, 23, 24 and 25, *supra*, whichever occurs later.

02/12/2009
IT IS SO ORDERED, this _____ day of _____, 2009.

RICHARD L. YOUNG, JUDGE
United States District Court
UNI Southern District of Indiana

AGREED AND CONSENTED TO:

For plaintiff United States:

For defendant City of Indianapolis:

GRACE C. BECKER
Acting Assistant Attorney General

___/s/ Andrew G. Braniff _____
JOHN M. GADZICHOWSKI
Acting Chief
ANDREW G. BRANIFF

___/s/ Chris W. Cotterill _____
CHRIS W. COTTERILL
Corporation Counsel
JONATHAN L. MAYES

Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Patrick Henry Building, Fourth Floor
Washington, DC 20530
Telephone: (202) 514-3831
Facsimile: (202) 514-1005

Chief Litigation Counsel
Office of Corporation Counsel
1601 City County Building
200 E. Washington Street
Indianapolis, IN 46204
Telephone: (317) 327-4055
Facsimile: (317) 327-3968

JOSEPH C. CHAPELLE
ANNE B. HAYES
Barnes & Thornburg, LLP
11 S. Meridian Street
Indianapolis, IN 46204
Telephone: (317) 236-1313
Facsimile: (317) 231-7433

Attorneys for plaintiff United States

Attorneys for defendant City of Indianapolis