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United States of America v. City of Erie, Pennsylvania

Keywords

United States of America, City of Erie, Pennsylvania, 04-4 ERIE, Consent Decree, Disparate Impact, Hiring, Sex, Female, Other, Employment Law, Title VII

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

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

CITY OF ERIE, PENNSYLVANIA,

DEFENDANT.

CIVIL ACTION NO. 04-4 ERIE

JUDGE McLAUGHLIN

CONSENT DECREE

I. INTRODUCTION AND BACKGROUND

1. The United States brought this action against the City of Erie, Pennsylvania (the "City") pursuant to Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-6, *et seq.* ("Title VII"). In its Complaint, the United States alleged that, since at least 1996, the City had violated Title VII by using a particular physical agility test (the "PAT") to screen applicants for employment as entry-level police officers. Specifically, the United States alleged that the City's use of the PAT disproportionately excluded female applicants from consideration for employment and was not job-related for the position in question and consistent with business necessity.

2. The Court bifurcated proceedings in this case into two phases, a liability phase and a relief phase.

3. On October 8, 2004, the Court granted partial summary judgment for the United States, finding that the City's use of the PAT caused a disparate impact against female applicants for the entry-level police officer position between 1996 and 2002, and, therefore, that the United

States had established a prima facie case.

4. A bench trial regarding the remaining liability issues was held on March 7-10, 2005, during which the City attempted to demonstrate that its use of the PAT was "job related for the position in question and consistent with business necessity," as required by Title VII. See 42 U.S.C. §2000e-2(k)(1)(A)(i). On December 13, 2005, the Court issued Findings of Fact and Conclusions of Law, determining that the City had failed to prove that its use of the PAT was job related and consistent with business necessity and, accordingly, that the City's use of the PAT violated Title VII. On the same date, the Court entered judgment in favor of the United States with respect to the City's liability under Title VII.

5. The United States and the City now have agreed to enter into this Consent Decree to resolve all relief phase issues without further contested litigation. Subject to the Court's approval of this Decree, the parties waive relief phase hearings and findings of fact and conclusions of law. The City also agrees that it shall not seek judicial appeal of any of the findings and conclusions of this Court related to the City's liability under Title VII, including, but not limited to, the Court's determination that the City's use of the PAT caused a disparate impact against female applicants and that the City failed to establish that its use of the PAT was job related and consistent with business necessity. The parties agree that this Consent Decree resolves all issues raised in the United States' Complaint, and is 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.

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

II. DEFINITIONS

6. "Claimant" refers to an individual who satisfies the requirements for eligibility for remedial relief pursuant to Paragraph 18 of this Decree.
7. "Claimant Eligible for Hiring Consideration" means a Claimant who, pursuant to Sections VII and VIII of this Decree, timely returns an Interest in Relief form, indicates on the form that she is interested in hiring relief and is listed on the Relief Awards List approved by the Court, following a Fairness Hearing on Individual Relief, as eligible for consideration for Priority Hire.
8. "Date of entry" of the Decree refers to the date on which the Court orders entry of the Decree at or following a fairness hearing.
9. "Day" or "days" refers to calendar, not business, days.
10. "Retroactive seniority" refers to the seniority that a Claimant would have had if she had been hired as a result of the application process during which she took and failed the PAT. All retroactive seniority awarded pursuant to this Decree is seniority for all purposes, except for purposes of pension benefits, consideration or eligibility for promotion or requirements for completion of a probationary period.
11. For purposes of Paragraphs 14 through 16 of this Decree, "use" of a physical ability test shall include, but not be limited to, making the completion of any training, course of study or process which includes a physical ability test a requirement for eligibility for, or hire into, an entry-level police officer position.

III. PURPOSES OF THIS DECREE

12. The purposes of this Decree are to ensure that:
 - (a) the City does not discriminate against women on the basis of their gender, in

violation of Title VII, in hiring entry-level police officers;

- (b) the City does not retaliate against individuals who complain of such discrimination or who have participated in the investigation or litigation of this case; and
- (c) individuals who were denied employment in the City's Bureau of Police as a result of the City's unlawful use of the PAT obtain remedial relief, including, as appropriate, backpay, an offer of employment and retroactive seniority.

IV. INJUNCTIVE RELIEF

13. The City, its officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them, shall not engage in any entry-level police officer selection practice utilizing the PAT used by the City between 1996 and 2002.

14. While this Consent Decree remains in effect, the City, its officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them, shall not use, in the selection of entry-level police officers, any physical ability test that results in a disparate impact against female applicants and is not job related for the entry-level police officer position and consistent with business necessity. To that end, the City shall not use, in the selection of entry-level police officers, any physical ability test without the prior agreement of the United States or, absent such agreement, prior approval of the Court.

15. If the City wishes to use any physical ability test to screen or select entry-level police officers, other than the MPOETC test with the 30th percentile passing standard used at the time of trial to determine eligibility for entry into the police academy, as set forth in Trial Exhibit HH and referenced in the Court's Findings of Fact and Conclusions of Law at n.8, the City must so notify the United States not less than one hundred twenty (120) days prior to the City's intended

use of the physical ability test. With the notice, the City must provide: a description of the physical ability test and the manner in which the City intends to use it; the known or likely disparate impact, if any, of the physical ability test; all evidence of the job relatedness or validity of the test available to the City; and any basis for a conclusion that the use of the test is job related and consistent with business necessity.

16. If the United States has not agreed to the City's use of the physical ability test within sixty (60) days after receipt of notice of the City's intended use of the test pursuant to the preceding Paragraph, the City may apply to this Court for approval of its use of the test. The Court shall approve the City's use of the physical ability test only if the City establishes by a preponderance of the evidence that its use of the test is job related for the entry-level police officer position and consistent with business necessity.

17. The City, its officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them, shall not discriminate or retaliate against any person because of his/her participation in the United States' investigation giving rise to this lawsuit, or any proceedings related to this lawsuit or arising under this Consent Decree, including, but not limited to, seeking or obtaining relief provided under this Consent Decree.

V. INDIVIDUAL RELIEF

A. Individuals Eligible for Relief

18. Claimants who are eligible for relief under this Decree are all women who:
- (a) applied for employment in an entry-level police officer position in the City of Erie Bureau of Police between January 1, 1996 and December 31, 2002; and
 - (b) failed the PAT at any time between January 1, 1996 and December 31, 2002.

A list of all such Claimants is set forth in Appendix A, attached hereto.

19. A Claimant shall not be required to now express an interest in hiring relief or to accept a job offer in order to receive monetary relief under this Consent Decree.

B. Monetary Relief

1. Deposit of the Settlement Fund

20. The City shall provide the sum of One Hundred Seventy Thousand Dollars (\$170,000) (the "Settlement Fund") in four installments, as described below, to be used to satisfy all monetary claims to be paid under this Consent Decree. This amount represents backpay, less mitigation, plus the value of benefits and prejudgment interest.

21. Within thirty (30) days after the date of entry of this Consent Decree, the City shall deposit the sum of Forty-Two Thousand Five Hundred Dollars (\$42,500) into an account in a federally insured financial institution agreed to by the parties.

22. Within fourteen (14) months after the date of entry of this Consent Decree, the City shall deposit an additional sum of Forty-Two Thousand Five Hundred Dollars (\$42,500) into the same account.

23. Within twenty-six (26) months after the date of entry of this Consent Decree, the City shall make a third deposit of Forty-Two Thousand Five Hundred Dollars (\$42,500) into the same account.

24. Within thirty-eight (38) months after the date of entry of this Consent Decree, the City shall deposit a final sum of Forty-Two Thousand Five Hundred Dollars (\$42,500) in the same account.

2. Monetary Relief Awards from the Settlement Fund

25. The Settlement Fund, including any interest that accrues on the Settlement Fund, shall be distributed by the City at the direction of the United States, as provided in Section X of this Decree. The amounts of monetary relief to be paid to individual Claimants by the City from the Settlement Fund shall be subject only to review by the Court.

26 The City shall pay all federal, state or local taxes or contributions that normally are paid by employers and that are due on any monetary relief award paid to a Claimant, including the appropriate employer's contributions to Medicare and the Social Security fund. No such taxes or contributions shall be deducted from either the Settlement Fund, the interest that accrues thereon or any Claimant's monetary relief award.

27. The City shall, to the extent required by law, withhold from each Claimant's monetary relief award all appropriate federal and state income taxes and any other required employee withholdings or deductions. Such amounts shall be deducted by the City from each claimant's monetary relief award and shall be paid by the City from the Settlement Fund.

C. Hiring Relief

1. Definitions Regarding Priority Hiring

28. In order for a hire to qualify as a Priority Hire under this Decree, the person hired must be a Claimant Eligible for Hiring Consideration who is hired after receiving an Offer of Priority Hire.

29. An Offer of Priority Hire is made only when the City makes an offer of employment in the entry-level police officer position to a Claimant by certified mail (return receipt requested), indicating that the offer is being made pursuant to this Decree, that the Claimant to whom the offer is made will be entitled to retroactive seniority at the completion of her probationary period, and that the Claimant has at least fourteen (14) days from the date on which she receives the written offer to notify the City that she accepts the offer. In addition, an Offer of Priority Hire must state that, if the Claimant accepts the offer, the City will pay the Claimant as a police officer recruit during the period of any police academy training required for certification as a law enforcement officer by the Commonwealth of Pennsylvania and will pay the costs of such

training.

30. Nothing in this Consent Decree precludes any Claimant from applying for hire or being hired as a police officer under the City's regular selection and hiring process. However, a hire of a Claimant under the City's regular selection and hiring process shall not be counted toward the City's Priority Hiring requirement under this Decree.

2. Priority Hiring Requirement

31. The City shall make up to, but no more than, five (5) Priority Hires.

32. The City shall not hire any person other than a Claimant Eligible for Hiring

Consideration into an entry-level police officer position until:

- (a) five (5) Priority Hires have been made; or
- (b) after the date on which the group of Claimants Eligible for Hiring Consideration is exhausted.

For purposes of this Paragraph, recall by the City of a police officer who was laid off within one (1) year prior to the date of the Court's liability judgment (December 13, 2005) or was laid off in January 2006 as a result of the City's 2006 budget reduction of the police force shall not be deemed a hire. The City may satisfy the priority hiring requirement of this Decree by hiring any five (5) Claimants Eligible for Priority Hire and is not required to consider such claimants in any particular order.

33. The group of Claimants Eligible for Hiring Consideration shall be exhausted for purposes of the preceding Paragraph only when each Claimant Eligible for Hiring

Consideration, as that term is defined in Paragraph 7 of this Decree:

- (a) has been hired as a Priority Hire; or
- (b) in writing has rejected an Offer of Priority Hire made by the City pursuant to this

Decree; or

- (c) has been agreed by the parties or determined by the Court to be currently unqualified for the entry-level police officer position, using the lawful, objective hiring criteria in use by the City at the time it evaluates the Claimant's qualifications.

Regardless whether the City currently requires that individuals who apply for the entry-level police officer position complete academy training and/or be certified by the Commonwealth of Pennsylvania in order to be eligible to apply or be hired, a Claimant Eligible for Hiring Consideration will not be deemed currently unqualified because she has not met such a training or certification requirement.

34. Within ten (10) days after the City has made a Priority Hire, the City shall notify the United States of the identity of the Claimant hired.

35. Within ten (10) days after the City receives from a Claimant a written rejection of an Offer of Priority Hire made pursuant to this Decree, the City shall provide a copy of such written rejection to the United States.

36. Within ten (10) days after the City determines that any Claimant currently is unqualified for the entry-level police officer position using the lawful, objective hiring criteria in use by the City at the time it evaluates the Claimant's qualifications, the City shall: (a) so notify the United States in writing; (b) provide a written statement of all reason(s) the Claimant currently is unqualified; and (c) provide the information and documents (e.g., background investigation reports, criminal history records, driving records, test scores, etc.) on which the City based its determination.

37. If the United States notifies the City that the United States wishes to interview any

official, agent or employee of the City involved in evaluating the qualifications of a Claimant determined by the City to be currently unqualified, the City shall make such person available for interview by the United States within ten (10) days.

38. If the United States does not agree with the City's determination that a Claimant currently is unqualified for the entry-level police officer position, the United States shall so notify the City within sixty (60) days after the date on which it receives notice of the City's determination.

39. If the parties are unable to resolve a disagreement regarding a Claimant's current qualification for the entry-level police officer position, either party may request that the Court resolve the dispute. In any proceedings regarding such a dispute, the City shall bear the burden of proving that the Claimant currently is unqualified.

D. Training and Certification of Priority Hires

40. The City shall pay each Claimant hired as a Priority Hire as a police officer recruit during the period of police academy training required for certification as a law enforcement officer by the Commonwealth of Pennsylvania and shall pay the costs of such training and certification.

E. Remedial Seniority Relief

41. On the date on which a Claimant hired as a Priority Hire pursuant to this Decree completes her probationary period, the Claimant shall be credited with retroactive seniority in the entry-level police officer position as of the date corresponding to her name on Appendix A to this Decree.

VI. FAIRNESS HEARING ON CONSENT DECREE

A. Request for Fairness Hearing on Consent Decree

42. Upon execution of this Decree, the United States and the City shall file a joint motion for the provisional approval and entry of the Decree by the Court and shall request a Fairness Hearing to allow the Court to determine whether the terms of this Decree are fair, reasonable, equitable and otherwise consistent with federal law. The Court shall provide the parties with at least ninety (90) days' notice of the date and time set for the Fairness Hearing on the Consent Decree.

43. The purpose of the Fairness Hearing on the Consent Decree and related notification provisions of this Decree is to provide to all individuals whose identities are currently known to the parties who may be affected by the terms of the Decree notice and an opportunity to present objections prior to entry of the Decree, in accordance with Section 703(n) of Title VII, 42 U.S.C. §2000e-2(n).

B. Notice of Fairness Hearing on Consent Decree

44. No later than sixty (60) days prior to the Fairness Hearing on the Consent Decree, the City shall provide written notice of the Hearing and information concerning the manner in which objections to this Decree may be made, in the form set forth in Appendix B, as follows:

- (a) by certified mail to the last known address of each Claimant listed on Appendix A to this Decree or such updated address as may be provided by the United States; and
- (b) to all incumbents in sworn positions in the City of Erie Bureau of Police, by hand delivery at the place of employment of each such individual, or as an attachment to each such individual's regularly distributed paycheck information.

No later than fifty (50) days prior to the Fairness Hearing on the Consent Decree, the City shall provide to the United States a list of the individuals to whom notice was given pursuant to subpart (a) of this Paragraph, a copy of each certified mail receipt, and a list of the individuals to whom notice was provided pursuant to subpart (b) of this Paragraph.

45. The City shall publish notice, in a form substantially similar to Appendix C, in the Wednesday, Friday and Sunday editions of The Erie Times-News. The published notice shall appear with a headline in bold typeface surrounded by a dark border, shall be no smaller than six (6) inches by ten (10) inches in size, and shall be placed in the local news section or other prominent location agreed to by the parties. All such newspaper notices shall be published for two (2) weeks concluding no later than four (4) weeks prior to the date set for the Fairness Hearing.

46. No later than seven (7) days prior to the Fairness Hearing, the United States and the City shall file a response to any objections to the Consent Decree timely filed with the Court and timely served on the United States and the City as provided in Appendix B and Appendix C.

VII. DETERMINATION OF INDIVIDUAL RELIEF AWARDS

A. Notice to Claimants of Entry of Consent Decree

47. Within ten (10) days after the date of entry of this Consent Decree by the Court at or after the Fairness Hearing on the Consent Decree, the City shall send the following by certified mail (return receipt requested), to the last known address of each Claimant listed on Appendix A to this Decree:

- (a) Process for Filing a Claim for Relief (as set forth as Appendix D); and
- (b) Interest in Relief form (as set forth as Appendix E).

B. Claimants to Submit Interest in Relief Forms

48. Any Claimant who fails to submit a completed and signed Interest in Relief form to the United States within twenty-five (25) days after entry of the Consent Decree by the Court at or after the Fairness Hearing on the Consent Decree, absent a showing of good cause, shall be deemed to have waived any right to be considered for individual remedial relief under this Consent Decree. The determination that a Claimant has shown good cause shall be within the sole discretion of the United States.

C. United States to Determine Relief Awards

49. Within sixty (60) days after the last date for submission of such forms by the Claimants, the United States shall file with the Court a Relief Awards List, indicating, for each Claimant:

- (a) whether the Claimant has submitted a timely Interest in Relief form;
- (b) whether the Claimant has indicated an interest in Priority Hire; and
- (c) the nature and amount of relief which the United States has determined the Claimant should be awarded under this Decree.

The United States shall simultaneously serve a copy of the Relief Awards List on the City and provide to the City a copy of all Interest in Relief forms received by the United States. The United States shall determine the amount of relief to be awarded under this Decree to each Claimant in a manner that is reasonable and equitable in relation to the Claimant population and the total amount of the Settlement Fund and that is consistent with the provisions of this Decree.

VIII. FAIRNESS HEARING ON INDIVIDUAL RELIEF AWARDS

50. Upon filing the Relief Awards List, the United States shall move the Court to hold a Fairness Hearing on Individual Relief. The Court shall provide the parties with at least sixty (60) days' notice of the date and time set for the Fairness Hearing on Individual Relief.

51. No later than forty-five (45) days before the date set for the Fairness Hearing on Individual Relief, the United States shall notify each Claimant of the United States' determination regarding the Claimant's eligibility for relief, the reason(s) for any determination by the United States that the Claimant is not eligible for any relief sought by the Claimant and the amount of the Claimant's monetary relief award, by letter in the form attached as Appendix F. The letter also will provide Claimants notice of the date, time and purpose of the hearing, as well as instructions for filing an objection to the United States' relief determinations, in the form attached as Appendix G.

52. Claimants who object to the United States' proposed relief determinations may file objections as follows:

- (a) Objections must be returned by mail, postmarked no later than thirty (30) days prior to the date set for the Fairness Hearing on Individual Relief;
- (b) Objections shall: state the objector's name, address and telephone number; set forth a description of the objector's basis for disputing the United States' relief determination; include copies of any documentation supporting the objections; state the name and address of the objector's counsel, if any; and state whether the objector wishes the opportunity to be heard in court at the Fairness Hearing on Individual Relief.
- (c) Objections shall be submitted by filing the original with the Court at the following address:

Clerk of the United States District Court for the
Western District of Pennsylvania
Erie Division
17 South Park Row
Erie, Pennsylvania 16501

(d) Objectors also must mail a copy of any objection to the United States

Department of Justice and the City at the following addresses:

Erie Police Settlement Team
Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Office of the City Solicitor
626 State Street, Room 505
Erie, Pennsylvania 16501

53. No later than seven (7) business days prior to the date set for the Fairness Hearing on Individual Relief, the United States and the City shall file with the Court a reply to each timely objection made by a Claimant.

54. If the City disagrees with the United States' determination that a Claimant is eligible for consideration for Priority Hire, no later than thirty (30) days prior to the date set for the Fairness Hearing on Individual Relief the City shall file with the Court an objection stating all grounds for the City's contention that the Claimant is not eligible for such relief and identifying all documents relating to the City's contention and all witnesses with knowledge of facts supporting the City's contention. On the same date, the City shall serve a copy of the objection on the United States along with a copy of all documents relating to the City's contention that the Claimant is not eligible for hiring relief. In addition, the City shall make available for interview or deposition all officials, agents and employees of the City with knowledge of facts supporting the City's contention within seven (7) days after the United States so requests.

55. At or following the Fairness Hearing on Individual Relief, the Court shall determine which, if any, objections to the United States' relief determinations, as stated in the Relief

Awards List, are well-founded. The Court shall then approve the Relief Awards List as submitted or, if the Court finds that any objection(s) are well-founded, shall amend it to adjust the amount and nature of the relief to be awarded to the Claimants consistent with such finding, while maintaining, to the extent possible, the proportionate shares of the Settlement Fund awarded to all other Claimants. The Court shall find that any objection regarding the amount of monetary relief to be awarded to a Claimant is well-founded only if the amount is not reasonable and equitable in relation to the Claimant population and the total amount of the Settlement Fund. The Court shall find that any objection, including any objection made by the City, regarding a Claimant's eligibility for consideration for Priority Hire is well-founded only if the objector(s) prove by a preponderance of the evidence that, at the time she failed the PAT, the Claimant was not qualified for the position of entry-level police officer in the City's Bureau of Police using the lawful, objective hiring criteria in use by the City at that time, for reasons including, but not necessarily limited to, the Claimant's medical background, psychological background or criminal history.

IX. ACCEPTANCE OF MONETARY RELIEF AND RETURN OF RELEASE

56. No later than thirty (30) days after the Court approves or adjusts the Relief Awards List at or following the Fairness Hearing on Individual Relief, the United States shall mail, by certified mail (return receipt requested), to each Claimant entitled to individual relief as stated in the Relief Awards List, at her last known address a notice which shall include:

- (a) a statement of the amount of the monetary relief awarded the Claimant;
- (b) an explanation of the time limit for acceptance of the monetary relief award;
- (c) a release form as described in the following Paragraph of this Decree; and
- (d) any withholding forms that the City deems necessary to comply with its

withholding obligations under law.

With each notice the United States shall include a stamped return envelope addressed to:

Erie Police Settlement Team
Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

57. As a condition for the receipt of a monetary relief award, each Claimant otherwise entitled to monetary relief as stated on the Relief Awards List approved by the Court shall be required to execute a copy of the release form set forth in Appendix H and return it to the United States no later than sixty (60) days after the Court approves the Relief Awards List. The date of return to the United States shall be the date of receipt by the United States of the executed release form. A failure to accept a monetary relief award and to return the release and withholding forms within the time allowed, absent a showing of good cause, shall constitute a rejection of the offer of monetary relief and shall release the United States and the City from any further obligation under this Decree to make a monetary relief award to that Claimant. The determination that a Claimant has shown good cause shall be within the sole discretion of the United States. Any amount of monetary relief which otherwise would be due under this Decree to a Claimant who, without good cause, fails to timely return the release and withholding forms shall remain in the Settlement Fund and be distributed by the City as directed by the United States as part of the Final Distribution, pursuant to Paragraph 64 of this Decree.

X. PAYMENT OF MONETARY RELIEF

A. Annual Distributions to Claimants

58. No later than thirty (30) days after the time for return of the release and withholding

forms by the Claimants, the United States shall forward to the City all executed release and withholding forms it receives, and shall direct the City to distribute 1/4 of the total amount of the Settlement Fund.

59. No later than thirty (30) days after the United States directs the City, pursuant to the preceding Paragraph, to make a distribution from the Settlement Fund, the City shall send by certified mail, return receipt requested, a first set of monetary relief award checks to the Claimants as directed by the United States. A check shall be made payable to each Claimant entitled to monetary relief in the amount of 1/4 of the amount set forth for that Claimant on the Relief Awards List approved by the Court, less appropriate employee withholdings and deductions pursuant to Paragraph 27 of this Decree. One (1) year, two (2) and three (3) years after the City mails the first set of monetary relief award checks, the City shall distribute, respectively, a second, third and fourth set of monetary relief award checks in the same manner. Each distribution shall total 1/4 of the Settlement Fund.

60. Within five (5) days after each distribution from the Settlement Fund, the City shall provide to the United States a statement, indicating the amount paid to each Claimant, as well as the amounts withheld from each Claimant's monetary award, and a copy of each monetary relief award check.

61. Sixty (60) days prior to the second distribution of monetary relief from the Settlement Fund, again sixty (60) days prior to the third distribution, and again sixty (60) days prior to the fourth distribution, the City shall notify the United States in writing whether any monetary award checks from the prior distribution were returned undeliverable or otherwise were not cashed and, if so, of the name and last known address of each Claimant to whom such a check was made payable.

B. Monetary Relief Due to Deceased Claimants

62. The monetary relief due to any Claimant who dies after timely submitting a completed Interest in Relief form shall be paid as directed by the United States and approved by the Court.

C. Final Accounting and Distribution

63. Within sixty (60) days after the City mails the fourth set of monetary relief award checks, the City shall file with the Court and serve on the United States a written report, which shall set forth: the total amount of monetary relief provided to each Claimant; the amount of funds remaining in the Settlement Fund account; and the amount of each monetary relief award check that was returned to the City undeliverable, and the name and last known address of the Claimant to whom each such check was payable.

64. Within sixty (60) days after the City files the report required by the preceding Paragraph, the United States shall direct the City to distribute the remaining funds in a manner consistent with the purposes of this Decree. Within thirty (30) days thereafter, the City shall make a Final Distribution, distributing the remaining funds to Claimants as directed by the United States. Any funds remaining in the account sixty (60) days after the Final Distribution shall revert to the City.

XI. DISPUTE RESOLUTION

65. 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, any party may move the Court for a resolution of the disputed issue.

XII. RECORD RETENTION

66. The City shall retain all of the following records (including those in electronic form) during the term of this Decree:

- (a) all applications for entry-level police officer positions in the City's Bureau of Police, as well as all documents related to the screening or evaluation of applicants and selection of entry-level police officers;
- (b) all documents relating to written or verbal complaints made by any person or organization regarding: (i) discrimination in hiring of police officers on the basis of gender; or (ii) retaliation for complaining of or participating in any proceedings involving a complaint of such discrimination;
- (c) all documents relating to the evaluation of any Claimant for Priority Hire pursuant to this Decree; and
- (d) all other documents relating to the City's compliance with the requirements of this Decree, including but not limited to documents relating to the payment or award of individual relief to any Claimant under this Decree.

XIII. COMPLIANCE MONITORING

67. The United States may review the City's compliance with this Decree at any time. Upon fifteen (15) days written notice to the City, without further order of this Court, the United States shall have the right to inspect and copy any documents that are relevant to the City's compliance with this Decree, including, but not limited to, those retained pursuant to Paragraph 66, above.

XIV. RETENTION OF JURISDICTION AND DURATION OF DECREE

68. 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 Decree.

69. This Consent Decree shall be dissolved and this action shall be dismissed, without further order of the Court, upon the occurrence of the later of the following two events:

- (a) the passage of four (4) years from the date of entry of this Decree;
- (b) the fulfillment of all Individual Relief provisions contained in Section V of this Decree.

XV. COSTS AND FEES

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

XVI. MISCELLANEOUS

71. Except for objections pursuant to Paragraph 52, above, all documents required to be delivered under this Decree to the United States by the City shall be sent to the attention of:

Chief, Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section-PHB 4040
950 Pennsylvania Ave., NW
Washington, D.C. 20530

72. Any documents required to be delivered under this Decree to the City shall be sent to the attention of:

Office of the City Solicitor
626 State Street, Room 505
Erie, Pennsylvania 16501

PROVISIONALLY APPROVED subject to the fairness hearing this _____ day of _____, 2006.

UNITED STATES DISTRICT JUDGE

APPROVED and ORDERED this ____ day of _____, 2006.

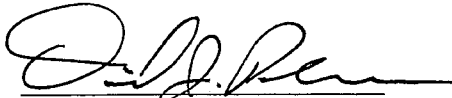
UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO:

For plaintiff United States of America:

WAN J. KIM
Assistant Attorney General
Civil Rights Division

By:



DAVID J. PALMER
Chief

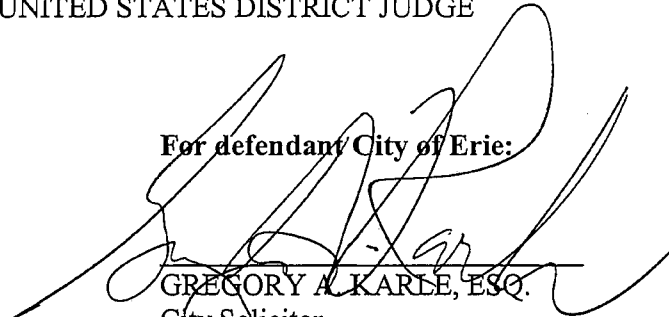


JOHN M. GABZICHOWSKI
Principal Deputy Chief

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Civil Rights Division
Employment Litigation Section
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Washington, D.C. 20530
(202) 514-4761 - telephone
(202) 514-1105 - facsimile

For defendant City of Erie:



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City Solicitor
GERALD J. VILLELLA, ESQ.
KENNETH A. ZAK, ESQ.
Assistant City Solicitors

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(814) 455-9438 - facsimile