

1990 WL 58710

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United States District Court, D. Kansas.

Harold L. SIMMONS, Shelby Eugene Johnson,  
John Henry Griffin, Ruby M. Ellington, Gregory L.  
Collins, Burnett J. Ambler, Jr., William K. Smith,  
Charles G. Pennington, and Donald McKinney, on  
behalf of themselves and all others similarly  
situated, Plaintiffs,

v.

The CITY OF KANSAS CITY, KANSAS, a  
municipal corporation, Allan E. Meyers,  
individually and in his capacity as Chief of Police  
of the City of Kansas City, Kansas, David T.  
Isabell, individually and in his capacity as City  
Administrator of the City of Kansas City, Kansas,  
and Fraternal Order of Police Lodge 4,  
Defendants.

CIV. A. No. 88-2603-O.

|  
April 9, 1990.

#### **Attorneys and Law Firms**

John H. Fields, Blaise R. Plummer, Carson & Fields,  
Kansas City, Kan., for plaintiffs.

Daniel B. Denk, McAnany, Van Cleave & Phillips, P.A.,  
Harold T. Walker, Kansas City, Kan., for defendants.

#### **ORDER**

EARL E. O'CONNOR, Chief Judge.

\*1 Pursuant to the court's order of March 12, 1990, the parties have filed responses to the court's proposed Notice of Pendency of Class Action, Form to Opt Out of Class, and Claim Form for Back Pay. There being no dispute that the Notice and Forms should reflect that plaintiffs have filed a First Amended Complaint naming the Fraternal Order of Police Lodge 4 as a defendant, the court will amend its proposals accordingly. There are no other proposals or objections.

Filed contemporaneously with this order are the court's Notice of Pendency of Class Action, Form to Opt Out of Class, and Claim Form for Back Pay. Counsel for defendants are directed to provide counsel for plaintiffs with the last known addresses of all black police officers employed by the City of Kansas City, Kansas, at any time on or after December 7, 1986. Counsel for plaintiffs are directed to mail copies of the Notice of Pendency of Class Action, Form to Opt Out of Class, and Claim Form for Back Pay to each such employee.

IT IS SO ORDERED.

#### **ATTACHMENT A**

#### **NOTICE OF PENDENCY OF CLASS ACTION**

Now on this 9th day of April, 1990, this notice is given to all black police officers employed by the City of Kansas City, Kansas, at any time on or after December 7, 1986, pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to an Order of the United States District Court of the District of Kansas, in Kansas City, Kansas, by the Honorable Earl E. O'Connor, Chief Judge. The court has determined that this lawsuit should proceed as a class action and that the members of the class are:

"All black police officers employed by the City of Kansas City, Kansas, at any time on or after December 7, 1986."

Since you are or may be a member of the class of plaintiffs whose rights may be affected by this litigation, this notice is being sent to you. This notice is not an opinion of this court as to the merits of any claim or defense asserted by any party to this litigation, but is sent for the sole purpose of informing you of the pendency of this litigation so that you may make appropriate decisions concerning this lawsuit.

The named plaintiffs and class representatives are Harold L. Simmons, Shelby Eugene Johnson, John Henry Griffin, Ruby M. Ellington, Gregory L. Collins, Burnett J. Ambler, Jr., William K. Smith, Charles G. Pennington, and Donald McKinney. Attorneys for the class representatives are John H. Fields and Blaise R. Plummer

of the law firm Carson and Fields, 302 Brotherhood Building, Kansas City, Kansas, 66101. Defendants are The City of Kansas City, Kansas, the Fraternal Order of Police Lodge 4, Allan E. Meyers, former police chief, and David T. Isabell, city manager for the City of Kansas City, Kansas.

The named plaintiffs and class representatives allege that The City of Kansas City, Kansas, from 1977 to the present, has engaged in a continuing pattern and practice of racially discriminatory promotions within the City's police department, allegedly resulting in the promotion of less qualified white officers, all to the detriment of black police officers. The named plaintiffs and class representatives also allege that the Fraternal Order of Police Lodge 4 has actively and passively supported a discriminatory promotion policy and has failed to propose a nondiscriminatory alternative, all with an intent and purpose to discriminate based on race. A copy of the First Amended Complaint filed in this action on February 7, 1990, can be reviewed and/or obtained at the Clerk of the District Court's Office, Room 151, United States Courthouse, 812 North 7th Street, Kansas City, Kansas, 66101.

**\*2** Named plaintiffs, who are all current black police officers with the City, propose to represent the entire class of black police officers employed by the City at any time on or after December 7, 1986. Named plaintiffs assert that they will fairly and adequately represent and will protect the interests of the class.

Named plaintiffs seek redress of their federal constitutional and statutory rights under the Civil Rights Act of 1866, 42 U.S.C. § 1981, as amended; the Civil Rights Act of 1871, 42 U.S.C. § 1983, as amended; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended; the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988; and pursuant to the Thirteenth and Fourteenth Amendments to the United States Constitution. The jurisdiction of the court is invoked under 28 U.S.C. § 1331 and 1343. Plaintiffs are seeking final injunctive and declaratory relief, and back pay for themselves and the class.

Defendants deny all allegations of racial discrimination in promotions and deny that the named plaintiffs will adequately represent the interests of the class.

#### *STATUS OF THE LAWSUIT AND THE CLASS*

The court has ruled that this lawsuit may be maintained as a class action on behalf of all black police officers employed by the City of Kansas City, Kansas, at any time on or after December 7, 1986. If you are or were an officer employed by the City of Kansas City, Kansas, during this time period, and you wish to be considered a member of the class, you need take no action at this time to be included in that part of the lawsuit seeking injunctive and declaratory relief. However, on or before May 15, 1990, you must advise the court, by completing and mailing the attached form to the Clerk of the District Court's Office, Room 151, United States Courthouse, 812 North 7th Street, Kansas City, Kansas, 66101, if you are seeking a judgment for back pay or lost wages.

If you desire not to be considered a member of the class, and thereby not to be bound by any monetary judgment that may be entered in this lawsuit, you may opt out of the class by executing the attached form and mailing it to the Clerk of the District Court's Office, Room 151, United States Courthouse, 812 North 7th Street, Kansas City, Kansas, 66101, on or before May 15, 1990. If you do not exercise your option to opt out, you will remain a member of the class and will be bound by any judgment entered in this lawsuit. Be advised that you will be bound by any injunctive relief the court may order, regardless of whether you opt out or not.

If you wish to retain your own counsel and intervene in this action, you may do so. Requests for leave to intervene by individual class members must be filed no later than May 15, 1990. If you do not intervene, your interests will be represented by the existing class representatives and their attorneys.

No adverse employment decision may be taken against you for your participation or nonparticipation in this class action.

#### **ATTACHMENT B**

#### *FORM TO OPT OUT OF CLASS*

**\*3** I, \_\_\_\_\_, do hereby advise the court that I desire to opt out of this class action. I understand that by so opting out, I will not be bound by any judgment entered in this case on the claims for

monetary damages. Further, I understand that by opting out of the class, I am waiving whatever rights I may have to share in any monetary judgment or settlement that may occur in this lawsuit. Finally, I understand that, even though I am opting out of the class, I will be bound by any injunctive relief the court may order.

(Signature)

(Date)

ATTACHMENT C

*CLAIM FORM FOR BACK PAY*

I, \_\_\_\_\_, a member of the class in the above-captioned action, do hereby give notice to the court that I am making a claim for back pay and that I desire to have that claim adjudicated in the present lawsuit.

(Signature)

(Date)

**All Citations**

Not Reported in F.Supp., 1990 WL 58710