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United States District Court, S.D. Illinois.

UNITED STATES OF AMERICA, Plaintiff,

v.

THE CITY OF BELLEVILLE and The City of Belleville Board of Fire and Police Commissioners, Defendants.

No. 93CV0799–PER. | Aug. 8, 1995.

## Opinion

### MEMORANDUM AND ORDER

RILEY, J.

#### *I. Introduction*

\*1 Now before the Court is the United States’ motion for final entry of the Consent Decree (Doc. 79) with supporting memoranda and responses thereto. For the reasons stated below, the Court GRANTS the motion and enters the Consent Decree.

#### *II. Background*

Plaintiff United States of America brought this action on November 10, 1993, against the City of Belleville, Illinois (“Belleville”) and the City of Belleville Board of Fire and Police Commissioners (“Board”) (referred to collectively as “Defendants” hereinafter) to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* United States alleges that the Defendants have engaged or are engaged in discriminatory employment practices which have had the purpose or effect of excluding blacks from Defendants’ work force in violation of Title VII.

These alleged discriminatory employment practices included (1) the use of residency requirements for employment with Defendants; (2) the use of written examinations in the selection of candidates for appointment to positions with the City of Belleville’s police and fire departments; (3) the failure to advertise employment opportunities; and (4) the failure or refusal to hire blacks on an equal basis as whites for municipal positions. These practices disproportionately excluded blacks from employment with Defendants.

Furthermore, Defendants have engaged in several discriminatory employment practices which have had the purpose or effect of excluding women from Defendants’ work force in violation of Title VII, including the use of physical performance examinations and weight and height requirements in the processing and selection of candidates for appointment to positions with the City of Belleville’s police and fire departments.

The Defendants have denied that any of their practices have discriminated against black or female applicants for employment or against anyone else in recruitment and hiring. The parties voluntarily entered into a Consent Decree after extensive discovery to resolve issues pending litigation, to avoid further delay, and to promote and effectuate the purposes of Title VII. The parties agreed that the Court has jurisdiction under Title VII over the subject matter of the pending litigation and over the parties.

The Consent Decree was provisionally entered by this Court on May 1, 1995. A front-end hearing on the merits of the

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Consent Decree was held on June 30, 1995. Prior to this front-end hearing, adequate and fair notice was provided to individuals so that they could comment upon and object to the Consent Decree.<sup>1</sup>

At the fairness hearing, counsel for the Plaintiff and counsel for the Defendants appeared. Teamsters Local Union No. 50, which represents employees in several collective bargaining units with the City of Belleville, appeared through counsel and objected to the retroactive seniority provisions in the Consent Decree. Ms. Carol Martindale, an employee of the City of Belleville, also appeared and objected.

**\*2** During the front-end hearing, the Court gave the parties an opportunity to explain their respective reasons for negotiating a settlement of the case. The Court allowed those who had filed written objections to explain their side of the issue. Any interested parties, particularly those who may be affected pursuant to the terms and conditions of the settlement but who had not filed written objections, had an opportunity to speak. Finally, parties to the settlement were given an opportunity to respond to the allegations of those who had written or oral objections. All parties were allowed seven days to file any briefs addressing matters pertinent to the Consent Decree.

### ***III. Overview of the Consent Decree***

The objectives of the Consent Decree are threefold. The first objective is to insure that the recruitment, hiring, selection and general employment practices of the Defendants are lawful and do not deprive individuals of equal employment opportunities on the basis of race or gender in order that Belleville's work force be representative of the racial and gender make up of the community from which individuals are available for hire. The second objective is to see that Defendants engage in efforts directed at recruiting and employing black and female applicants for all jobs with Defendants in order to eliminate the present effects of any past discrimination. The third objective is to insure the Defendants provide remedial relief to individuals identified by the United States as victims of the alleged discrimination.

The central provisions of the Consent Decree are listed as follows:

(1) The Defendants shall not engage in any employment practice which has the purpose or effect of unlawfully discriminating against blacks or women in the recruitment, selection, hiring or retention of employees or in other terms or conditions of employment.

(2) The Defendants shall implement a recruitment program designed to attract qualified black and female applicants for all employment positions with the Defendants.

(3) The Defendants shall use procedures to select employees, including applicants for the police and fire departments, that do not have a disparate impact based upon race or gender unless such procedures can be shown to be job related for the position in question and consistent with business necessity.

(4) The Defendants shall not utilize any residence requirements that condition eligibility for employment on residing within the City of Belleville at any time prior to commencing employment for those positions covered by Title VII of the Civil Rights Act of 1964, as amended.

(5) The Defendants shall establish a \$450,000 back pay settlement fund to be distributed to individuals identified by the United States as victims of the alleged discrimination in accordance with procedures set forth in the Decree.

(6) The Defendants shall provide priority employment for up to five (5) women and fourteen (14) black individuals for positions with the police and fire departments and nine (9) black individuals for other municipal positions, with remedial seniority to individuals identified by the United States as victims of the alleged discrimination in accordance with procedures set forth in the Decree.

**\*3** (7) The Defendants shall establish a \$250,000 pension settlement fund to be distributed to the appropriate pension programs servicing the employees of the Defendants on behalf of victims of the alleged discrimination identified by the United States who accept an offer of employment from the Defendants in accordance with the procedures set forth in the Decree.

(8) The Defendants shall retain all necessary and relevant records concerning the implementation of the Decree and

furnish bi-annual reports to the United States concerning employment decisions by the Defendants; and

(9) The Consent Decree will remain in effect for five (5) years after the date of entry, at which time either party may move the Court for its dissolution upon a showing that the purposes of the Consent Decree have been substantially achieved.

#### **IV. Standard for Approval of Consent Decrees**

Voluntary compliance in settlement of alleged unlawful acts of employment discrimination is the preferred means of achieving Title VII's goal of insuring equal employment opportunities and eliminating discriminatory practices. *Local No. 93, International Association of Firefighters, AFL-CIO C.L.C v. City of Cleveland*, 478 U.S. 501, 515 (1986) (citations omitted). A court should enter a consent decree if its terms are lawful, fair, reasonable and adequate. *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir.1985). If a consent decree affects third parties, the court must be satisfied that the effect on them is neither unreasonable nor proscribed. *United States v. City of Miami, FLA*, 664 F.2d 435, 441 (5th Cir.1981).

Whether a proposed consent decree is lawful, fair, reasonable and adequate depends upon (1) comparing the strengths of Plaintiff's case versus the amount of the settlement offer; (2) the likely complexity, length and expense of the litigation; (3) the amount of opposition to the settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery already undertaken at the time of the settlement. *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d at 889, citing *Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir.1982). The district court may not deny approval of a consent decree unless it is unfair, unreasonable or inadequate. *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d at 889.

#### **V. Discussion**

##### **A. Lawfulness**

This Decree lawfully provides the prospective and remedial relief the parties find is necessary and proper to resolve the issues raised by the United States' complaint. Congress enacted Title VII of the Civil Rights Act of 1964 with the intent to prohibit all practices in whatever form which create inequality in employment opportunity due to discrimination on the basis of race, religion, sex or national origin. *Franks v. Bowman Transp. Co., Inc.*, 424 U.S. 747, 763 (1976), citing *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 44 (1974) (further citations omitted). "... [O]ne of the central purposes of Title VII is 'to make persons whole for injuries suffered on account of unlawful employment discrimination.'" *Franks v. Bowman Transp. Co., Inc.*, 424 U.S. at 763, citing *Albemarle Paper Company v. Moody*, 422 U.S. 405, 418 (1975).

\*4 Congress provided federal courts with a broad range of equitable remedies to achieve these ends, including but not limited to the hiring of individuals unlawfully denied jobs, the award of back pay and retroactive seniority. *Id.* Justice Brennan, writing for the majority in *Franks v. Bowman*, 424 U.S. at 770, made it clear that "[w]here racial discrimination is concerned 'the [district] court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.'" *Id.*, citing *Albemarle Paper*, *supra*, 422 U.S. at 418. Fashioning adequate relief requires:

... slotting the victim in that position in the seniority system that would have been his had he been hired at the time of his application. It can hardly be questioned that ordinarily such relief will be necessary to achieve the "make-whole" purposes of the Act.

*Franks v. Bowman*, 424 U.S. at 765-66.

##### **B. Adequacy, Reasonableness and Fairness of the Decree**

The Consent Decree was voluntarily entered into by the parties after the complaint was filed and substantial discovery was

completed. The strength of the United States' case when balanced against the amount offered in settlement weighs in for approval. The agreed to stipulations provide substantial evidence that the United States can make a *prima facie* case by showing patterns or practices implemented by Belleville constituted employment discrimination on the basis of race and gender in violation of Title VII.

At the heart of the United States' case is evidence demonstrating that Belleville's employment practices discriminated against blacks, racially, as to all positions of employment with the City and against women on the basis of gender for positions of employment as police officers and fire fighters, i.e., the "inexorable-zero." *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 343, note 23 (1977). Belleville employed no black individuals in any permanent position until September 1991. Belleville employed no women as police officers until January 1994 and still employees no women as fire fighters.<sup>2</sup>

In evaluating the fairness of a settlement, the Court need not weigh the evidence supporting the underlying claims, but instead need only evaluate the probable outcome of the litigation and is not required to weigh and decide each contention. Further, the probable result at trial must be balanced against the probable costs in both time and money of continued litigation. *Byran v. Pittsburgh Plate Glass Company*, 494 F.2d 799, 801 (3rd Cir.1974), *cert. denied*, 419 U.S. 900 (1974).

The evidentiary strength of the United States' case supports an award of remedial relief for unidentified victims of the alleged discrimination. The amount of remedial relief agreed upon by the parties includes \$450,000 for back pay and up to 28 positions for which priority offers of employment will be made to which retroactive benefits will attach. The parties have agreed that these terms are fair and adequate for compensating the victims, especially in light of the complexity of this case and the expense of continuing litigation. Such agreement by the parties weighs heavily in favor of the final entry of the Consent Decree.

## **VI. Specific Objections**

\*5 Carol Martindale is an employee of the City of Belleville. She alleges that from 1972 to 1976 she attempted to become a police officer but due to height, weight and eyesight requirements, she was unable to qualify. Inasmuch as the Consent Decree provides remedies only for persons who have sustained an injury after 1985, Ms. Martindale's concerns are outside of the scope of the Consent Decree.

A second set of objections were raised by the Teamsters Automotive, Petroleum and Allied Trades, Local Union No. 50 ("Local 50"). In a letter received by the Court on June 13, 1995 (Doc. 75), Local 50 notes that it represents bargaining unit members employed by the City of Belleville. There are three separate bargaining units governed by three separate collective bargaining agreements. The Clerical Employees Agreement covers the office and clerical workers for the City of Belleville and the office and clerical workers in the City's Park and Recreation Board. The Drivers and Helpers Agreement covers the drivers and helpers in the street, sewer lines and sanitation departments of the City of Belleville. The Parking Control Officers Agreement covers the parking control officers for the City of Belleville.

In Local 50's letter (Doc. 75), attention was drawn to paragraphs 41 and 43 of the Consent Decree, noting that these paragraphs conflict with the seniority provisions set forth in the above-referenced contracts. It is actually paragraphs 39 and 40(a) of the Consent Decree which are in dispute. Local 50 asserts that "... the collective bargaining agreements' seniority provisions will be significantly skewed by the Consent Decree that is being proposed."

Defendants join Local 50 by arguing that the retroactive seniority provisions in the Consent Decree will have an impact on the seniority rights of incumbents under the collective bargaining agreement of Local 50. Plaintiff agrees that it is appropriate for the Court to consider the effect the Consent Decree will have on incumbent employees. Local 50 requests the Court to enter the Consent Decree *sans*, the competitive retroactive seniority concept.

It is established that some effects on the relative seniority of incumbent employees are justified in order to achieve the goals of Title VII. *Franks v. Bowman*, 424 U.S. at 774-79; *Moore v. City of San Jose*, 615 F.2d 1265, 1272 (1980). Additionally, the burden is on the objector to demonstrate some "unusual adverse impact." *Franks v. Bowman*, 424 U.S. at 779, note 41; *Moore*, 615 F.2d at 1271-72.

No where has the Plaintiff asserted that collusion existed between Local 50 and the City of Belleville in the collective

bargaining agreements. Actions by Local 50 have not been considered in this dispute and are not at issue. The Consent Decree does not affect the collective bargaining agreements or the actual seniority dates of any incumbents. While it is not possible to know presently what the specific impact will be on the seniority list under each of the collective bargaining agreements and that impact cannot be estimated until the priority hiring list is established pursuant to terms of the Consent Decree, the implementation of the Decree may only impact the expectation of incumbents in maintaining his or her current relative seniority ranking. Such an expectation is not a right or interest. *Petru v. City of Berwyn*, 872 F.2d 1359 (7th Cir.1989).

\*6 The majority in *Franks v. Bowman Transp. Company*, 424 U.S. 747 (1976), held that retroactive seniority relief like that contemplated in the Consent Decree is necessary to make victims whole for violations of Title VII even in light of some adverse impact on non-victims. Plaintiff points out that the Consent Decree requires the Defendants to make priority job offers filling a maximum of 28 positions as these positions become available. Of the 28 positions, only 9 involve municipal employment, not within the police and fire departments.<sup>3</sup> In addition, the greatest seniority date any of the identified victims who accept a position could achieve is March 1, 1985. Both factors mitigate to blunt Local 50's objections.<sup>4</sup>

Local 50 notes that the current incumbents who will bear the brunt of the retroactive seniority relief afforded to the identified victims are minorities and women, as these current incumbents have the lowest of the seniority dates. Local 50 argues that such an effect is contrary to the advocate position taken by the United States on behalf of minorities and women. In response, Plaintiff properly notes that the minorities and women who are current incumbents will have the opportunity to file claims as victims if they believe they were previously denied employment due to the alleged discrimination and possibly be granted retroactive seniority under the terms of the Consent Decree.<sup>5</sup>

The point of a consent decree is to avoid a trial being held. Liability has not been established through admission or judgment in this case. The essence of settlement is that no liability findings are made and no trial is necessary. If such a liability finding were necessary, few settlement agreements in Title VII actions or in any actions would come to fruition. If this Court were to adopt Local 50's position, it would clearly frustrate the strong policy of favoring voluntary compliance and settlement in Title VII cases. *Local No. 93, International Association of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501 (1986); *Alexander v. Gardner-Denver Company*, 415 U.S. 36 (1974).

## VII. Conclusion

Having considered the record as a whole, this Court hereby GRANTS Plaintiff's motion (Doc. 79) for final entry of the Consent Decree. The fairness hearing provisions of the Consent Decree satisfy the requirements of Title VII of the Civil Rights Act of 1964, as amended, and the terms of the Consent Decree are fair, reasonable and adequate in resolution of the allegations raised in the United States' complaint. This Court retains jurisdiction to enforce compliance with the provisions of the Consent Decree.

IT IS SO ORDERED.

### Footnotes

<sup>1</sup> The Defendants have sent written notice to all incumbent employees, to all individuals named on current eligibility lists for the police and fire departments, and to all collective bargaining units for the City of Belleville. Additionally, Defendants published notice of the front-end fairness hearing in the *St. Louis Post Dispatch*, *Belleville News Democrat*, and the *East St. Louis Monitor*.

<sup>2</sup> Whether this Court uses the relevant labor market urged by the Plaintiff, that being St. Clair County or one of the alternatives urged by the Defendants, that is to say (1) St. Louis, Missouri/Illinois Standard Metropolitan Statistical Area, (2) four counties of Madison, St. Clair, Macoupin, Randolph Counties, or (3) some other combination, including, St. Clair County, St. Louis City and St. Louis County and other Illinois counties, the evidence leads to the same conclusion. The inexorable-zero provides sufficient evidence to establish a *prima facie* case.

<sup>3</sup> Thus, only 9 positions fall within Local 50's three collective bargaining agreements. Local 50 refers to both women and minorities as being affected by the additional priority hire employees. The alleged discrimination in employment for all positions covered by the collective bargaining units represented by Local 50 was on the basis of race only. The United States' complaint raised allegations of discrimination on the basis of sex only with regard to the police and fire departments.

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- <sup>4</sup> The argument posed by Local 50 regarding the potential harm of lay-offs is speculative. Since at least 1985, it has not been necessary for the City of Belleville to lay-off any employees due to an economic downturn.
- <sup>5</sup> The Consent Decree includes comprehensive measures to guarantee that only *bona fide* victims of the allegedly discriminatory practices and policies of Defendants receive remedial relief. This Court must approve the remedial relief afforded each identified victim, including placement on the priority hire eligibility lists, and, as part of that process, a “back-end” fairness hearing will be held.