

## Reynolds v. Alabama DOT

United States District Court for the Middle District of Alabama, Northern Division  
March 16, 1994, Decided ; March 16, 1994, FILED, ENTERED  
CIVIL ACTION NO. 85-T-665-N

**Reporter:** 1994 U.S. Dist. LEXIS 20921

JOHNNY REYNOLDS, et al., Plaintiffs, v. ALABAMA DEPARTMENT OF TRANSPORTATION, et al., Defendants.

**Counsel:** [\*1] LAURIE EDELSTEIN, Special Master, special master, [PRO SE], Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., New York, NY. WINN S. L. FAULK, Special Master, special master, [PRO SE], Mobile, AL.

For JOHNNY REYNOLDS, individually on behalf of himself and as representative of a class of black employees of the Highway Department, State of Alabama, similarly situated, plaintiff: Leonard Gilbert Kendrick, Montgomery, AL. Richard J. Ebbinghouse, Robert L. Wiggins, Jr., Jon C. Goldfarb, Gregory O. Wiggins, C. Paige Williams, Rebecca Anthony, Gordon, Silberman, Wiggins & Childs, Birmingham, AL. Julian L. McPhillips, Jr., McPhillips, Shinbaum, Gill & Stoner, Montgomery, AL. Rick Harris, Glassroth & Associates, Montgomery, AL.

For CECIL PARKER, FRANK REED, OUIDA MAXWELL, MARTHA ANN BOLEWARE, PEGGY VONSHERIE ALLEN, JEFFERY W. BROWN, intervenor-plaintiffs: Leonard Gilbert Kendrick, Montgomery, AL. Richard J. Ebbinghouse, Robert L. Wiggins, Jr., Jon C. Goldfarb, Gregory O. Wiggins, C. Paige Williams, Rebecca Anthony, Gordon, Silberman, Wiggins & Childs, Birmingham, AL. Julian L. McPhillips, Jr., McPhillips, Shinbaum, Gill & Stoner, Montgomery, AL. Rick Harris, Glassroth & Associates, [\*2] Montgomery, AL. For ROBERT JOHNSON, intervenor-plaintiff: Leonard Gilbert Kendrick, Montgomery, AL. Richard J. Ebbinghouse, Robert L. Wiggins, Jr., Jon C. Goldfarb, Gregory O. Wiggins, C. Paige Williams, Rebecca Anthony, Gordon, Silberman, Wiggins & Childs, Birmingham, AL. Claudia H. Pearson, Longshore, Nakamura & Quinn, Birmingham, AL. Julian L. McPhillips, Jr., McPhillips, Shinbaum, Gill & Stoner, Montgomery, AL. Rick Harris, Glassroth & Associates, Montgomery, AL. Florence Belser, intervenor-plaintiff, [PRO SE], Montgomery, AL. For WILLIAM ADAMS, on behalf of himself and all similarly situated persons (Non-Class Employees), CHERYL CAINE, on behalf of herself and all similarly situated persons (non-class employees), TIM COLQUITT, on behalf of himself and all similarly situated persons (non-class employees),

WILLIAM FLOWERS, on behalf of himself and all similarly situated persons (non-class employees), WILSON FOLMAR, on behalf of himself and all similarly situated persons (non-class employees), GEORGE KYSER, on behalf of himself and all similarly situated persons (non-class employees), BECKY POLLARD, on behalf of herself and all similarly situated persons (non-class employees), [\*3] RONNIE POUNCEY, on behalf of himself and all similarly situated persons (non-class employees), TERRY ROBINSON, on behalf of himself and all similarly situated persons (non-class employees), TIM WILLIAMS, on behalf of himself and all similarly situated persons (non-class employees), intervenor-plaintiffs: Raymond P. Fitzpatrick, Jr., David P. Whiteside, Jr., Whiteside & Fitzpatrick, Birmingham, AL.

For GARY MACK ROBERTS, JAMES E. FOLSOM, JR., as Governor of the State of Alabama, defendants: William F. Gardner, William K. Thomas, R. Taylor Abbot, Jr., Cabaniss, Johnston, Gardner, Dumas & O'Neal, Birmingham, AL. Robert M. Weinberg, Jeff Sessions, Attorney General, Office of the Attorney General, Alabama State House, Montgomery, AL. Patrick H. Sims, Cabaniss, Johnston, Gardner, Dumas & O'Neal, Mobile, AL. For HALYCON VANCE BALLARD, individually and as Director of Personnel Department, State of Alabama, DEPARTMENT OF PERSONNEL, STATE OF ALABAMA, defendants: Bert S. Nettles, Lisa Wright Borden, London, Yancey, Elliott & Burgess, Birmingham, AL. William F. Gardner, William K. Thomas, R. Taylor Abbot, Jr., Cabaniss, Johnston, Gardner, Dumas & O'Neal, Birmingham, AL. Robert M. Weinberg, [\*4] Jeff Sessions, Attorney General, Office of the Attorney General, Alabama State House, Montgomery, AL. Patrick H. Sims, Cabaniss, Johnston, Gardner, Dumas & O'Neal, Mobile, AL. For DEPARTMENT OF TRANSPORTATION, STATE OF ALABAMA, defendant: Bert S. Nettles, Lisa Wright Borden, London, Yancey, Elliott & Burgess, Birmingham, AL. William F. Gardner, William K. Thomas, R. Taylor Abbot, Jr., Cabaniss, Johnston, Gardner, Dumas & O'Neal, Birmingham, AL. Robert M. Weinberg, Jeff Sessions, Attorney General, Office of the Attorney General, Alabama State House, Montgomery, AL. Jack Franklin Norton, Alabama Department of Transportation, Legal Division, Montgomery, AL. Patrick H. Sims, Cabaniss, Johnston, Gardner, Dumas & O'Neal, Mobile, AL.

**Judges:** Myron H. Thompson, UNITED STATES DISTRICT JUDGE. Mag. Judge John L. Carroll

**Opinion by:** Myron H. Thompson

**Opinion**

*ORDER*

The court has before it motions relating to the approval of certain segments of a proposed consent decree submitted to the court by the parties on November 18, 1993, and preliminarily approved by the court on November 19, 1993. Pursuant to the court's order of January 24, 1994, the proposed decree has been divided into three segments:

Consent [\*5] Decree I contains all provisions of the proposed decree which are unopposed by the intervenors;

Consent Decree II contains certain provisions of the proposed decree to which the intervenors object, including provisions which the intervenors contend are "race-conscious" and the plaintiffs contend are not; and

Consent Decree III contains certain other provisions of the proposed decree to which the intervenors object, namely, the provisions that the parties and intervenors agree are "race-conscious," as set forth in the "Joint Statement Pursuant to P 4 of the Order Entered January 24, 1994," filed by the parties and the intervenors on February 1, 1994. On March 7, 1994, plaintiffs filed a motion seeking approval of Consent Decrees I and II. Subsequently, the parties and the intervenors resolved certain of the intervenors' objections to provisions contained in Consent Decree II and moved those provisions to a revised Consent Decree I. On March 9, 1994, intervenors filed a motion requesting the court to adopt their proposed revisions to the provisions of Consent Decree II. The parties and intervenors are in agreement that Consent Decree I, as revised, contains only "race-neutral" [\*6] provisions; the intervenors do not object to the court's approval of Consent Decree I.

The court finds Consent Decree I to be "fair, adequate, and reasonable." *Pettway v. American Cast Iron Pipe Co.*, 576 F.2d 1157, 1214 (5th Cir. 1978), cert. denied, 439 U.S. 1115, 99 S. Ct. 1020, 59 L. Ed. 2d 74 (1979); *Paradise v. Wells*, 686 F. Supp. 1442, 1444-46 (M.D. Ala. 1988) (Thompson, J.). Furthermore, because the parties and intervenors agree that the provisions of Consent Decree I

are race-neutral, the court need not engage in strict-scrutiny analysis to determine if any race-conscious relief is legal. *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 503, 506, 109 S. Ct. 706, 727, 728, 102 L. Ed. 2d 854 (1989); *Peightal v. Metro. Dade County*, 940 F.2d 1394, 1399 (11th Cir. 1991) (majority opinion). The court concludes that the provisions of Consent Decree I are neither illegal nor against public policy. *United States v. Alexandria*, 614 F.2d 1358, 1362 (5th Cir. 1980); *Harris v. Graddick*, 615 F. Supp. 239, 242 (M.D. Ala. 1985) (Thompson, J.). The court therefore determines that there is no just reason to delay the approval of Consent Decree I.

The court will consider [\*7] final approval of Consent Decrees II and III separately at a later time. Plaintiffs' and intervenors' motions with respect to Consent Decree II will therefore be denied without prejudice.

Accordingly, it is the ORDER, JUDGMENT, and DECREE of the court:

(1) That the motion to implement unopposed parts of proposed consent decree, filed by the plaintiffs on March 7, 1994, is granted as to Consent Decree I and denied without prejudice as to Consent Decree II;

(2) That the motion for approval of unresolved objections to non-race-conscious aspects of consent decree, filed by the intervenors on March 9, 1994, is denied without prejudice.

DONE, this the 16th day of March, 1994.

Myron H. Thompson

UNITED STATES DISTRICT JUDGE

*CONSENT DECREE I*

This lawsuit was filed under Title VII of the Civil Rights Act of 1964, as amended, and 42 U.S.C. § 1981 and § 1983 alleging racial discrimination in employment. The case has been certified and maintained as a class action on behalf of the following:

A. All black merit system employees employed by the Alabama Highway Department at any time since May 21, 1979, with said class represented by plaintiffs Johnny Reynolds, Ouida Maxwell, and Martha [\*8] Ann Boleware; and

B. All black non-merit system employees of the Alabama Highway Department and all black non-employees who have unsuccessfully sought employment as merit system employees with the Alabama Highway Department at any

time since May 21, 1979, with said class represented by plaintiffs Peggy Vonsherrie Allen and Jeffrey Brown.

A recess in the trial of the case for the purpose of settlement negotiations has resulted in the Consent Decree which follows. The following terms and provisions of this Consent Decree are accordingly agreed to in final and complete resolution of all class issues which have been asserted in the case, subject to the provisions of this Decree providing for further proceedings, including but not limited to Articles 20 and 21.

#### ARTICLE ONE RECRUITMENT

##### A. EXPANDED RECRUITMENT PROGRAM:

Highway will, within 60 days of approval of the Consent Decree, develop a written plan for recruitment which will contain at least the following provisions:

*1. Recruitment of engineering students:* Direct recruitment of every black civil engineering and civil engineering technology student enrolled in colleges in the Southeastern United States having black [\*9] persons enrolled in such programs and at the Howard University Engineering School, with the following minimum efforts for each person:

(a) Initial recruitment efforts to be initiated for each such person no later than one year after enrollment in such program.

(b) Direct contact with such persons throughout the remainder of their enrollment in such program, with a minimum of one contact each six months until one year after graduation or the candidate is placed on the GCE register, whichever occurs first.

(c) Documentation in a standard format of each contact with such student or graduate and the reason they did not apply or were not placed on a register.

(d) Encouragement and assistance in applying for the position of GCE and other appropriate positions.

(e) Monitoring of the progress of each such person's application through the application, examination, registration, certification and selection process and assistance at appropriate points that may enhance their eventual availability to the Highway Department on COE's.

(f) Development of a program to encourage and assist such students and/or graduates in taking and satisfying the requirements of the EIT, registration with the [\*10] appropriate licensing agencies, and eventual licensing by such agencies.

(g) Use of monetary incentives to attract black candidates by starting persons having the EIT in a GCE pay grade no lower than pay grade 2.

(h) The Highway Department will fund a program in cooperation with Alabama A&M University to increase awareness of and interest in civil engineering careers with the Highway Department and provide preparation for the FOE examination for students in civil engineering and civil engineering technology programs. Such funding will be \$ 20,000.00 per year for a duration of 5 years.

(i) Encouragement and assistance in applying for the position of PCET and revision of certain aspects of PCET program so as to increase the availability of black engineers through such program.

*2. Recruitment of persons with EIT or RPE Certification:* Direct recruitment to the extent practicable of every black person who holds the EIT or a professional engineering license issued by the State of Alabama and who has a degree in civil engineering or civil engineering technology, with the following minimum efforts for each such person:

(a) Initial recruitment efforts to be initiated for each such [\*11] person no later than 60 days after entry of the Decree.

(b) Continuous recruitment efforts until the person states that they are not interested in working for the Highway Department or they are placed on an appropriate register for GCE, GRE, or PCE.

(c) Documentation in a standard format of each contact with such person and of the reason they did not apply, were not placed on a register or COE, or were not selected.

(d) Encouragement and assistance in the process of applying and being examined, registered, certified and considered.

(e) Monitoring of the progress of each such person's application through the application, examination, registration, certification and selection process and assistance by Highway at appropriate points that may enhance their eventual availability to the Highway Department on COE's.

(f) Use of monetary incentives to attract black candidates by starting persons having the EIT in a GCE pay grade no lower than pay grade 2.

*3. Recruitment of Persons with CE or CET Degrees:* Direct recruitment of every black person who can reasonably be identified as holding a degree in civil

engineering or civil engineering technology by means of Highway requesting the [\*12] names and addresses of such persons from colleges in the Southeastern United States having such programs and at Howard University and contacting such persons as are identified by such means and by taking the steps set forth in Paragraph 2 above with respect to such persons.

4. *Recruitment for higher level Engineering jobs:* For the Engineering positions above Civil Engineer I, the program will identify special means by which qualified black candidates can be recruited and, within the limits of merit system rules, employed. The attorney for the class shall have the right to review and object to the means adopted and to seek further relief by petitioning the Court for such relief.

5. *Persons to be included in recruitment efforts:* The expanded recruitment program will include, but not be limited to, the following:

(a) Recruitment in the Southeastern United States at educational institutions having black students enrolled and at Howard University in educational programs related to the job classifications listed in Paragraph 19 of Section B of this Article.

(b) Recruitment addressed to --

(i) Current employees regarding career paths/ better job opportunities.

(ii) Applicants [\*13] rejected or not selected.

(iii) Employees certified but not selected regarding potential opportunities in other jobs.

(iv) Applicants within the past 5 years who have not reapplied or kept their eligibility active or current, except the period shall be 10 years for the engineering job classes.

(v) Eligibles who have been certified-out from Personnel to Highway during the past 5 years but failed to schedule or appear for an interview, except the period shall be 10 years for the engineering job classes.

(vi) Existing eligibles who may be able to improve their score or rank by being reexamined or by further training or education.

(vii) Past employees who may have left the Highway Department because of a perception of limited opportunities.

(viii) Employees who may be able to advance through reclassification or reallocation.

(ix) Any other potential source of candidates or means by which job opportunities for black persons may be improved.

6. *Encouragement and assistance:* The expanded recruitment program will include verbal and written encouragement and assistance by the Highway Department with applicants and potential applicants to offer assistance or advice in moving through [\*14] the application, examination, certification, and selection process. The phrase "potential applicants" as used in this Paragraph 6 means:

(a) Persons who have to the knowledge of the Highway Department expressed an interest in applying;

(b) Persons who the Highway Department has reason to know may be interested in applying;

(c) All black students in civil engineering or civil engineering technology programs at colleges in the Southeastern United States having such programs and at Howard University;

(d) Such persons as are identified by the procedure set forth in Paragraph 3 above as graduates of civil engineering or civil engineering technology programs in the 10 years prior to the effective date of this Decree.

7. *Evaluation:* The steps taken in connection with and the results of the expanded recruitment program will be evaluated at least quarterly by the Highway Director and the Personnel Director or their designees. The result of such evaluation and the data used in the evaluation process will be reported in the quarterly reports required by the Settlement Decree. Personnel will institute a system of tracking the source of the applicant's knowledge of job opportunities and [\*15] recruiting efforts to which he/she was subject, which at a minimum, will include responses to inquiries of the applicant or his application and computerized tabulation of such data into a report which allows monitoring of the effectiveness of recruiting sources. Such data shall be provided to the plaintiffs' attorney within 30 days of the end of each calendar quarter of the year during the duration of this Decree.

8. *Frazer/Ballard:* The expanded recruitment program will include recruitment which extends beyond the past and existing recruitment activities by Highway and beyond the recruitment obligations provided for in *Frazer/Ballard*.

9. *Nationwide advertising:* Such expanded recruitment program will include special nationwide advertising campaigns designed to reach qualified black candidates.

10. *Intensified Recruiting:* Personnel will conduct monthly reviews of the racial composition of all registers for the

classes listed in Paragraph 19 of Section B of this Article. Whenever the black proportion of eligibles who are reachable on the Register for the next three vacancies for such classifications is less than 15% of the total eligibles on such Register for such job, [\*16] the Personnel Department will so notify the Highway Department, and the Highway Department within 10 days of such notice will commence special intensified nationwide recruiting and advertising aimed at increasing the total number of black eligibles on such Register for such job classification to the 15% level. Such intensified recruiting will also consist of the following:

(a) Highway will pay the expenses associated with bringing top black candidates to Alabama in order to provide them with the opportunity to see the work environment and be interviewed; provided, however, that such expenses will not exceed 10 persons per year up to a maximum of total expenses for all such 10 persons together of \$ 10,000 per year. Provided that in the event the Highway Department has not achieved the goals provided for by Article Eleven with respect to the jobs listed in Paragraph 19 of Section B of this Article by the end of a calendar year during the term of this Decree, the maximum in the next succeeding calendar year will be up to 15 persons and \$ 15,000 total expenses for all 15 such persons together. Provided further that the obligations provided for by this sub-paragraph (a) shall not be extended [\*17] beyond December 31, 2000 and that the Highway Department will decide which black candidates will be paid such expenses within the spirit or the purposes of this Decree.

(b) Highway will engage in the efforts described in Paragraph 2 above of this Article One of this Decree;

(c) Highway will utilize monetary incentives when necessary to attract such black candidates by starting them in a pay grade no lower than pay grade 2 or at such other level within the permissible range as is necessary for them to accept employment with the State of Alabama;

(d) Highway will utilize further monetary incentives to attract such black candidates for the PCET, GCE, GRE and PCE jobs by starting those who had at least a 3.5 average in college and 12 months of civil engineering experience at no less than Step 4 of Pay Grade 2;

(e) For advanced entry in job classifications above the entry level, Highway will provide such orientation and training as is reasonably necessary to allow the black candidate to make the transition to the methods of work and organization of the Highway Department and will inform the applicant or potential applicant that such special efforts will be made so that advanced entry [\*18] is both feasible and successful;

(f) Highway will document any difficulties or obstacles encountered in recruiting or appointing each such black

applicant and, to the extent practicable, will develop and implement policies or programs aimed at removing such obstacles or recruitment.

*11. Colleges: Geographic Scope:*

(a) The State Highway Department will conduct a program of on-campus recruiting at the following colleges and universities:

- Alabama A & M University
- Alabama State University
- Auburn University
- Auburn University in Montgomery
- Miles College
- Stillman College
- Talladega College
- University of Alabama
- University of Alabama in Birmingham
- University of Alabama in Huntsville
- University of South Alabama
- Georgia Institute of Technology
- Southern University
- Florida A & M University

(b) The expanded recruitment program will utilize a wider-geographical area than Alabama which encompasses all colleges having black students enrolled in any educational program leading to satisfaction of the educational requirements of the jobs subject to Paragraph 19 of Section B of this Article in [\*19] the Southeastern United States and Howard University.

*12. Study of other recruitment programs:* The recruitment efforts of other employers outside of state government will be studied and, if requested by the plaintiffs, an outside expert on recruitment would be consulted in devising the expanded recruitment program.

*13. Dissemination of information:* The expanded recruitment program will include the dissemination of written information to applicants regarding the application, ranking, certification, and selection process so that all applicants have equal opportunity to learn how to maximize their chances of being ranked higher on registers for Highway Department jobs, of being certified

to the Highway Department, and being selected by the Highway Department.

14. All recruitment activities shall be documented in a manner, means and format agreed between the parties.

15. (a) At least 50% of the on-campus recruiting each calendar year during the term of this Decree will be made by a black staff member of the State Highway Department assigned to recruiting. When any on-campus recruiting during the term of this Decree is made by more than one State Highway Department recruiter [\*20] on one recruiting trip, at least one of such recruiters is to be black.

(b) The State Highway Department will provide to offices of the Alabama State Employment Service announcements of openings for or examinations for the jobs set forth in Section 19 of Section B of this Article.

(c) On a semi-annual basis during the terms of this Settlement Decree, the State Highway Department will place a notice as set forth in the attached Appendix inviting applicants to apply with the State Personnel Department for State Highway Department jobs in the following newspapers:

- The Birmingham Times
- The Montgomery Tuskegee Times
- The Mobile Beacon

16. Nothing contained in this Decree is intended or shall be construed to limit the colleges or sources at which the State Highway Department conducts any recruitment.

17. The Student Aide Co-Op program presently in effect will remain in effect during the term of this Decree.

18. The recruitment demands and standards imposed upon the State Personnel Department and the State Highway Department under the Decree entered in United States v. Frazer, 317 F. Supp. 1079 (M.D. Ala. 1970), and as amended from time to time, [\*21] will continue to guide such Departments in its recruitment during the duration of this Decree.

***B. JOBS TO WHICH THE EXPANDED RECRUITMENT PROGRAM WOULD APPLY:***

*19. Jobs covered by the program:* The expanded recruitment program will apply to the following merit system job classes at the Highway Department:

- (a) The PCET, GCE, and GRE classes.
- (b) The Professional Civil Engineer and Civil Engineer classes.

(c) The Accountant and Auditor job classes, the Project Cost Auditor job classes, the Right-of-Way job classes, the Engineering Assistant job classes, Highway Maintenance Superintendent, Chemist I, Community Planner I, Electrical Engineer, Geologist I, Highway Office Manager, Programmer I, Programmer-Analyst I, Transportation Planner I, and such other job classes for which an open competitive job announcement is utilized and the percentage of black persons on the Register for such job is more than 5% lower than the availability of persons in the Alabama labor force for such job or job family, provided, however, that if the Highway Department does not anticipate an opening in the coming 12 months in such a job, such expanded recruitment programs will not apply with respect [\*22] to such job. In the event the Highway Department determines that it does not anticipate such an opening in the coming 12 months, it will notify the plaintiffs' counsel of such determination and the job or jobs in which it does not anticipate such an opening.

***ARTICLE TWO MINIMUM QUALIFICATIONS***

***1. Limitation on the use of minimum qualifications:***

Minimum qualifications will not be utilized on examination announcements or to preclude an applicant from examination unless the minimum qualification bears a manifest relationship to skills, knowledges, or abilities necessary to the performance of the job at entry without a brief orientation period and such skills, knowledges or abilities are not addressed in the examination process.

***2. Consultation:***

(a) Subject to Article Four on Implementation of Personnel Projects, Personnel will forthwith utilize a content validation procedure to determine the appropriate minimum qualifications for the Highway Department job classes. Such determination and the SPD validation procedure will be subject to challenge by plaintiffs and no new minimum qualifications will be implemented without approval by the plaintiffs or the Court.

(b) [\*23] Appointments in the interim between the effective date of this Decree and the completion of the requirements of this Article shall be governed by the provisions of Article Four of this Decree entitled Implementation of Personnel Projects.

***3. Use of Minimum Qualifications In Examinations:*** Nothing in this Article of the Consent Decree shall preclude the use of minimum qualifications as a part of the examination process provided that such minimum qualifications satisfy Paragraph 1 of this Article and have been determined to be valid within the meaning of the

Uniform Guidelines of Employee Selection Procedures by the State Personnel Department.

4. *High School Diploma and GED:* The State Highway Department will be permitted to use a high school diploma or a GED as a minimum qualification after it has been validated in accordance with the requirements of this Decree (including Paragraph 1 of this Article) and the Uniform Guidelines on Employee Selection Procedures by the State Personnel Department.

#### ARTICLE THREE SCORING AND RANKING

1. *Cooperation with the State Personnel Department:* The Highway Department will cooperate with the Personnel Department in formulating and [\*24] implementing the steps to be taken by the Personnel Department pursuant to the scoring and ranking provisions of the Settlement Decree.

2. *Highway Department program:* The Highway Department will develop and implement a program designed to achieve the following:

(a) Assuring to the extent practicable that black employees are provided with equal opportunities to be assigned to duties of the jobs they hold comparable to the assignment of white employees on such job to such duties, provided that this is not intended to require all employees on a job to be assigned to the same duties or to require the assignment of anyone to duties which they are not qualified to perform after normal training and/or orientation.

(b) Developing a procedure for informing employees regarding career paths within the Highway Department.

(c) Providing an equal opportunity to black employees for participation in training programs comparable to training programs in which white employees on the same job participate.

(d) Developing a system for monitoring the progress of the above procedures.

#### 3. *Plan to monitor adverse impact:*

(a) Personnel will maintain adequate means for measuring and monitoring [\*25] the adverse impact of screening and selection criteria used in eligibility for examinations, ranking, scoring and forming Registers or COE's and will submit such means to the plaintiffs' attorney for review and comment.

(b) Within 90 days of the approval of the Decree, the Highway Department will submit its plan for measuring

and monitoring the impact of the selection criteria used in appointments.

(c) In the absence of agreement, the Court will decide the adequacy of the means of measurement and monitoring.

#### 4. *Validation of criteria:*

(a) Personnel will develop and thereafter use only selection criteria and procedures that have been validated in accordance with the Uniform Guidelines on Employee Selection Procedures. For the SPD Project job classes, such validation will be completed within two years of the effective date of this Decree; for all other Highway Department jobs they will be completed within a reasonable period after the effective date of the Decree, subject to the right to seek further relief set forth in Paragraph 4 of Article Four on Implementation of Personnel Projects.

(b) Appointments in the interim between the effective date of this Decree and the completion [\*26] of the requirements of this Article shall be governed by the provisions of Article Four of this Decree entitled Implementation of Personnel Projects.

#### 5. *Choice of examination types:*

The choice among examination types (written, T & E, structured oral interview, etc.) will be made based on the results of the job analysis; provided, however, that such analysis shall be subject to challenge by the plaintiffs in the event it is found to be inadequate to achieve the purposes of this Consent Decree. With respect to written tests:

(a) SPD will use written tests only when:

(i) The minimum qualifications for the class confirms that all candidates taking the test have the necessary reading abilities to pass the test, and either:

(ii) The job analysis supports the need to read and understand written instructions and/or information; or

(iii) A large number of candidates must be screened.

(b) All written tests which are developed will be:

(i) Checked for reading level to assure that it is at no higher level

than defined by the minimum qualifications; and

(ii) Reviewed by a socio-linguistic specialist to identify and correct any wording which may introduce [\*27] a cultural bias.

(c) SPD will actively look for alternative selection procedures which may have less adverse impact.

#### 6. *Pending Court Approval*

7. Validation studies for written tests will be conducted in accordance with the Uniform Guidelines on Employee Selection Procedures.

8. During the selection of examination type and development of the selection instrument, SPD will search for effective alternative devices which would have lesser disparate impact. Where a selection device shows substantial disparate impact upon use, SPD will search for effective alternative devices which would have lesser disparate impact in future selection decisions, and will utilize such devices unless impracticable; provided, however, that this paragraph, and this Decree as a whole, will not modify or affect any obligation of the parties bound by this Decree which arises under federal or state law or regulations, the remedies and requirements set forth in *Ballard/Frazer*, or the Uniform Guidelines on Employee Selection Procedures.

#### 9. *Content of examination announcements:*

Prior to administering examinations after the effective date of this Decree, defendants will develop, in [\*28] cooperation with a qualified industrial psychologist, an examination announcement or material accompanying the application informing prospective applicants of the nature of the selection procedures, the characteristics the procedures are designed to assess, and the information with which the applicants are expected to be familiar on the examination.

#### 10. *Documentation:*

Defendants will make available to plaintiffs' attorney sufficient information and documentation to show that the development and implementation of the selection procedures conform to the Uniform Guidelines. All validation efforts shall be documented in writing and make available to plaintiffs' counsel for review at least 30 days before an Examination Announcement or other use of the examination which is the subject of such validation effort.

11. Except to the extent that service ratings are a component of the examination, all examinations shall be

administered by Personnel without involvement of any Highway employees in any aspect of the administration, including the scoring, ranking, evaluating, grading, or assessing of applicants; provided, however, that the parties may agree to relax this requirement for any [\*29] future selection procedure that utilizes Highway personnel in administration of valid examinations which necessitate such involvement by Highway, such as assessment centers, or other structured examination procedures, and provided further that nothing contained in this Decree will preclude or limit the use by Personnel of Highway employees as "subject matter experts" in a validation project.

12. *Prohibition of Divulging Contents of Examinations:* Personnel and Highway will develop means to prevent, to the extent practicable, activities which have the purpose effect of disclosing the content of examinations to applicants or examinees, or potential applicants or examinees, prior to administration of examinations, or which have the purpose or effect of aiding some applicants or examinees in the examination process in ways which are not available to all applicants who are eligible for the examination; provided, however, that this paragraph will not be used to inhibit or prevent any formal training offered equally to all applicants or potential applicants so long as such training is disclosed to the Personnel Department in writing and that Department does not find, after review, that [\*30] such training compromises the validity or reliability of the examination or the examination process. The means used to prevent potential compromise of the examination process will include, but not be limited to; (1) a policy which prohibits the types of activities listed above and which is disseminated to all applicants or potential applicants with a warning that violation of the policy may result in discipline (up to and including discharge from employment), and/or disqualification from examination process for a prescribed period of time of not less than one year; and (2) a set of procedures for monitoring and investigating activities which may compromise the examination process; provided nothing in this paragraph shall prohibit applicants from forming study groups whether or not these study groups admit all applicants.

#### ARTICLE FOUR IMPLEMENTATION OF PERSONNEL PROJECTS

1. This Decree establishes a number of duties for Personnel, including four projects that will involve substantial studies:

- (a) Validation of minimum qualifications (Article Two);
- (b) Examination validation (Article Three);



(c) Study of multi-grade job (Article Fifteen); and

(d) Analysis [\*31] of individual reclassification requests (Article Fifteen).

sufficient opportunity for the Highway Department to satisfy the goals or minimum number of appointments required under this Decree, then the plaintiffs may seek further relief from the [\*33] Court.

2. Projects (a) and (b) set forth in Paragraph 1 above will focus on the following principal Highway Department classifications: Highway Maintenance Technician, Engineering Assistant, Professional Civil Engineer Trainee, Graduate Civil Engineer, Graduate Registered Engineer, Civil Engineer, Professional Civil Engineer, Right-of-Way Specialist, Project Cost Auditor, and Highway Office Manager. The classifications listed in the preceding sentence are referred to in this Decree as the "SPD Project Classes." The precise sequencing is to be determined by Personnel, provided that the goal is to complete all four projects within two years of the effective date.

*2. Promotional registers:*

(a) In the establishment of Promotional Registers for the SPD Project Classes, the weight to be given to the service ratings component in the ranking of eligibles on the register will be 10% percent and not higher of the total ranking score. This provision does not otherwise restrict the utilization of service ratings, including specifically the banding of service rating scores, subject to Article Five of this Decree regarding Banding practices.

3. Upon approval of this Decree, then-existing Registers for the SPD Project Classes will be abolished. During the period between the effective date of this Decree and the creation of new registers using newly validated minimum qualifications and examinations, vacancies in the SPD Project Classes identified in Paragraph 2 above may be filled by provisional appointments, which appointment may extend to the time of creation of such new registers.

(b) Eligibility for placement on Promotional Registers for the classes described in the SPD Project Classes will not be restricted to service in the immediately preceding feeder job (including EA-3 as a feeder for CE-1), and will include no residency requirement higher than one year of service in the line of progressions leading to the job or experience at the level of such service; provided, however, that the applicant has the work experience, degree, license, or certification which is a minimum qualification for the job to be filled on an open-competitive basis; and provided further that this Paragraph 2(b) will not apply to the following:

***LAST SENTENCE PENDING [\*32] COURT APPROVAL***

4. With respect to non-SPD project classes, if plaintiffs contend that existing registers do not provide sufficient opportunity for the Highway Department to satisfy the goals or minimum number of appointments required under this Decree, then the plaintiffs may seek further relief from the Court.

a. PCE-2 and above;

b. GRE;

c. Highway Maintenance [\*34] Superintendent;

d. As to CE-3 and above, the procedure will be that -

-- A CE-3 may advance to CE-5 (but not higher) without service as a CE-4;

-- A CE-4 may advance to CE-6 (but not higher) without service as a CE-5; and

-- A CE-5 may advance to CE-7 without service as a CE-6.

e. In the event any grade of the multi-grade jobs listed above is restructured in or as a result of the job classification study provided for by Paragraph 3 of Article Fifteen ("Reclassification and Reallocation"), the provisions in sub-sections a and d will remain in effect with respect to the restructured grades.

(c) The provisions of this Paragraph 2 are subject to Paragraph 8 of Article Nineteen ("General").

***ARTICLE FIVE BANDED SCORING***

***PENDING COURT APPROVAL***

***ARTICLE SIX REGISTERS***

*1. Continuous registers:* With respect to the SPD Project Classes, the Personnel Department will use continuous registers. Continuous registers will also be used for any job classification that has been subject to continuous registers at any time since 1979, and for any other job classification for which Continuous Register will aid recruitment of black applicants unless Personnel determines that current registers would enhance the prospects of black applicants and potential black applicants. With respect to non-SPD Project Classes, if plaintiffs contend that existing registers do not provide

3. *Purging from a register:* The following provisions will be adopted with respect to the purging of a name from a register for the SPD Project Classes:

(a) Personnel may continue to purge names from continuous registers after two years.

(b) At least 45 days before a name is to be purged from a continuous register pursuant to (a), Personnel will give written notice to the applicant and to Highway and shall maintain adequate documentation of such notice.

(c) The Highway Department [\*35] will thereupon contact or attempt to contact the person whose name is proposed to be purged to inform them of their right to reapply for the job and to otherwise recruit and encourage such person to maintain their eligibility. Any black applicant who requests that his name remain on the register will not be purged pursuant to (a). The Highway Department shall notify Personnel of the completion of such efforts and the response, if any, of the applicant within 40 days of receipt of Notice of proposed purging from Personnel. If the applicant has not indicated he wishes to remain on the Register, copies of such notice to Personnel from the Highway Department will be furnished to plaintiffs' counsel at the time such Notice is sent to Personnel. Personnel shall not purge the names of any persons until after receipt of such response from the Highway Department. Within three days of such purging, Personnel shall notify the applicant that he has been removed from the Register and of his right to be reinstated to the Register upon request. Adequate written or computerized documentation of all such contacts, attempts, encouragement, recruitment and requests shall be maintained and available for [\*36] inspection by the plaintiffs' counsel.

(d) Personnel may continue to place in an inactive status the name of any person who declines three opportunities for consideration or selection in writing.

(e) Whenever a black applicant is to be made inactive pursuant to (d), Personnel will give notice to the applicant and Highway at least 45 days before the applicant is inactivated. Highway will then make the efforts required by (c). Any black applicant who thereafter requests reactivation will be reactivated.

4. *Abolition of registers:* The following provisions will be adopted with respect to the abolition of current registers for the SPD Project Classes:

(a) A register will not be abolished or replaced without an analysis of the impact of such replacement on black

applicants and the goals set out in this Decree, and will be abolished only when the age and composition of the register, new job analysis, or other factors indicate that a new register should be found.

(b) When a register is abolished or replaced, Personnel will, two weeks before the application deadline for the new examination, notify Highway of the identify of any black eligibles on the abolished or replaced register [\*37] who have not reapplied for the new register and Highway will then engage in the special recruitment efforts to encourage applications set forth in Paragraph 3 (c) immediately above.

(c) All black eligibles on the abolished or replaced register who reapply for the new register shall be placed on such new register.

#### *ARTICLE SEVEN CERTIFICATES OF ELIGIBLES*

1. *Request for COE:* When a permanent opening occurs in a classified position at the Highway Department and such job opening is to be filled, the Highway Department will request a COE for such job opening within 30 days, provided that --

(a) This is not intended to require the filling of a job and will apply only where it is Highway's decision to fill the job.

(b) There is a requisition and funding for such job.

(c) This will not preclude a subsequent filling of the job by a request by the Highway Department for a COE, provided that the Highway Department gives notice in writing to the Personnel Department of non-discriminatory justification for not having requested a COE within such 30 day period and subsequently requesting a COE.

(d) For any permanent opening in a classified position at the Highway Department which is [\*38] not to be filled through a COE within 30 days of any event which causes the permanent opening, the Highway Department shall give notice to Personnel of the reason for not filling such opening.

2. *No delay in requesting a COE:* The Highway Department will not delay requesting a COE for a permanent opening in a job which is to be filled for any purpose of avoiding or attempting to avoid the certification or appointment of black eligibles on the register for such job.

3. *Register to be used for COEs: PENDING COURT APPROVAL:*

a.

b.

#### 4. *Pre-screening:*

(a) The Personnel Department will not provide the Highway Department with the means of knowing the identities or the racial composition of potential Certificate of Eligibles before the official issuance of such a Certificate.

(b) The Highway Department will take appropriate action to assure that officials and employees of the Highway Department do not have access to and do not use information about the probable composition of alternative Registers or Certificates of Eligibles in determining when to fill positions, from what Registers to fill positions, or any other advance information which may have the purpose [\*39] or effect of favoring or disfavoring persons of one race over another.

5. *TIED SCORES:* Where black eligibles and white eligibles would appear on the same Certificate of Eligibles with tied scores, Personnel will continue to certify all such eligibles but will use a procedure to be developed by it to break the tie. The plaintiffs' attorney will have the right to review and object to the procedure used and to petition the Court with regard to the subject before it is implemented.

#### *ARTICLE EIGHT INTERVIEWS BY THE HIGHWAY DEPARTMENT*

1. *Interviews of black eligibles on a COE:* When black eligibles appear on a COE, Highway will schedule interviews with them and will conduct the interview before deciding whom to select for the job; provided, however, that if a black eligible cannot be located, fails to respond or declines an effort to schedule an interview after the efforts required by Paragraph 3 of this Article ("Failure to Appear for Interviews"), Highway may fill the position without conducting an interview of that applicant.

2. *Standard interviews:* The Highway Department will develop and use standard format interview questions which will to the extent practicable be [\*40] designed to elicit objective non-discriminatory job related information relating to the applicant and the job to be filled.

3. *Failure to appear for interviews:* If a black eligible on a COE fails to appear for a scheduled interview or fails to respond to the Highway Department's invitation to schedule an interview, the Highway Department will make reasonable and good faith efforts to contact such person to advise him or her of the importance of the interview and to provide another opportunity for an interview.

4. *Interviewers:* For all Highway employees who conduct interviews, the Highway Department will develop and implement a training program in interviewing techniques and procedures for the purpose of minimizing to the extent practicable any disadvantage to black eligibles in the interview process.

5. *Forms to be filled out by interviewers:* The Highway Department will develop and use forms to be filled out by the interviewer or interviewers which will list the job-related qualifications of each eligible interviewed.

#### *ARTICLE NINE APPOINTMENTS*

##### *1. Monitoring by the EEO Bureau:*

(a) The racial composition of appointments to each job will be monitored by the Highway [\*41] Department's EEO Bureau on a periodic basis in comparison to the racial composition of eligibles certified for such job to determine the selection rate of black eligibles.

(b) The periodic basis for such monitoring will include appointments on the following intervals: quarterly, annually, 3 years, 5 years, and such other periods as are necessary to assess the Highway Department's progress.

(c) The Highway Department's EEO Bureau shall monitor recruitment progress and the selection process so as to assure that the purposes of this Decree and Highway's Affirmative Action Program are fulfilled. To this end, such EEO Bureau shall develop a systematic written program for such monitoring within 90 days of the effective date of this Decree and will submit it within 10 days thereafter to plaintiffs' counsel for comments and review.

2. *Form as to the eligibles selected:* In connection with appointments, the Highway Department will develop and use a form which will state the reason that the eligible selected for appointment is regarded as the best qualified candidate for the job.

##### *3. Role of race: PENDING COURT APPROVAL:*

4. *Prohibitions in connection with appointments:* The [\*42] Highway Department will not avoid or attempt to avoid the appointment of black eligibles on registers by means of canceling requests for certifications, returning certifications, requesting the abolishment of registers, delaying requests for certifications or appointments, or any other means.

5. *Effort to include black employees in the interview and selection process:* In conducting interviews and in making appointments, the Highway Department will endeavor to the extent practicable --

(a) To include black employees among the interviewers, and

(b) To include black employees among the persons making decisions regarding the eligible to be appointed.

6. *Provisional Appointments:* Provisional appointments will be made only in accordance with Section 670-X-9-3 (3)(d) of the rules of the Personnel Department, and in no circumstances will be used to avoid black eligibles or the other provisions of this Decree. **LAST SENTENCE PENDING APPROVAL OF COURT**

**ARTICLE TEN HIGHWAY DEPARTMENT JOBS AND CAREER PATHS**

1. *In-house jobs:* The Highway Department will develop and use a designation of the merit system jobs which may fill each of the in-house job titles utilized by [\*43] the Highway Department.

2. *Career paths:* The Highway Department will develop and disseminate to employees a written description of the in-house job titles and career paths available within the Highway Department and the merit system job classifications and Registers from which the jobs in each career path may be filled.

3. *Manager or supervisor programs:* Within 180 days of the effective date of the Decree, and thereafter on an annual basis, the Highway Department will --

(a) Conduct a supervisory management orientation program, open to all interested employees, for the purpose of explaining the management and supervisory positions in the Highway Department career paths and the duties and responsibilities of such jobs.

(b) Conduct a supervisory management update program to be attended by all managers and supervisors for the purpose of reporting on the progress of the Highway Department pursuant to the Settlement Decree, to apprise them of ongoing and proposed Highway Department projects, and to provide training in new or updated techniques in management and supervision.

**ARTICLE ELEVEN GOALS**

**PENDING COURT APPROVAL, EXCEPT FOR PARAGRAPHS 11, 21 AND 22**

[\*44] **A. GENERAL:**

- 1.
- 2.
- 3.

**4.B. JOBS SUBJECT TO THIS ARTICLE:**

**5.C. GOALS:**

- 6.
- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)

- 7.
- (a)
- (b)
- (i)
- (ii)

**GOALS:**

- 8.
- 9.
- 10.

11. The Highway Department will take affirmative steps to have eligible black employees of the Department receive assignments at rates proportional to their representation in the relevant job classifications to the better in-house job titles at the Highway Department. In the event that the plaintiffs conclude that the efforts of the Highway Department in this area are not adequate, they may petition the Court for further relief in this area during the pendency of this Decree.

- 12.
- 13.
- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.

21. Any Engineering Assistant I or II who is actively employed in either of such jobs as of the effective date of this Decree and who had at least two years service in either one or both of such job classifications as of October 4, 1989 will be reclassified as an Engineering Assistant III within 30 days of the effective date of this Decree and will be paid at the rate which would have now been applicable [\*45] if they had become an Engineering Assistant III on the fifth (5th) anniversary of their entrance into the Engineering Assistant I or II job classification, whichever occurred earliest.

22. In the event that minimum qualifications for engineering classifications are defined in terms of years of service in other classifications, and in the event that prior experience is scored according to periods of incumbency in other classifications, the following will apply:

(a) All periods after the 5th year of service as an EA I and/or EA II will be deemed to be service as an EA III.

(b) All years of service after the 8th year of service as an EA at any level will be deemed to be service as a CE I.

(c) All years of service after the 10th year of service as an EA at any level will be deemed to be service as a CE II.

- 23.
- 24.
- 25.
- 26.
- 27.
- 28.

*ARTICLE TWELVE SPECIAL PROCEDURE FOR APPOINTMENT OF ENGINEERS*

***ENTIRE ARTICLE PENDING COURT APPROVAL***

*1. Jobs:*

*2. Goal:*

- (a)
- (b)
- (c)

*3. Incumbents on the GCE job:*

*4. Duration*

*5. General:*

*ARTICLE THIRTEEN ENGINEERING JOB CLASSES*

*1. Limit on the use of EIT status:*

(a) On and after the effective [\*46] date of the Consent Decree, EIT status and any associated tests will not be utilized as a prerequisite for the job of GCE.

(b) After the goals provided by the Consent Decree for the GCE job have been achieved, then in evaluating eligibles certified to it for the GCE job, the Highway Department may consider EIT status as a factor in the selection process but may not appoint a white applicant in preference to a black applicant based solely on EIT status.

(c) Personnel will not utilize the EIT for scoring, ranking or certifying applicants for the position of GCE.

*2. GCE job:*

(a) The position of GCE will not be reduced in status, pay or importance from what it has been in the past.

(b) The GCE job will continue to be used as the entry level job for the PCE line of progression.

(c) The GCE job will also be expanded to an advanced entry level position for the CE line of progression.

(d) The number of GCE's during the term of the Consent Decree will not be less than the average number per year of GCE's between January 1, 1983 and January 1, 1993.

*3. State registration:*

(a) Certification by the State Board of Registration as a Registered Professional Civil Engineer will continue [\*47] to be a prerequisite for the PCE and GRE jobs. It will not be a prerequisite for any CE or GCE job.

(b) The PCE job will not be used excessively by the Highway Department in the assignment of employees to the in-house job titles which have been filled by both employees in the PCE job and in the CE job.

(c) The Highway Department will not make appointments from PCE Registers or use the PCE job as the source for assignments for in-house job titles for the purpose of avoiding compliance with any provision of this Decree.

(d) In the case of Highway employees who have taken but failed to pass the State Board examination for Registered Professional Civil Engineer or who are eligible to take such State Board examination, Highway will develop a special training program aimed at preparing them to take or retake the State Board examination.

4. *Offers of reclassification of incumbent employees to GCE: **PENDING COURT APPROVAL:***

5. *Offers of employment in the GCE job:*

(a) The following persons (if they have Civil Engineering or Civil Engineering Technology degrees) will be offered

	<b>CREDITED SERVICE DATE</b>
Alfedo Acoff	March 30, 1983
Peggy Vonsherrrie Allen	March 30, 1983
Christopher Zaubuike	March 30, 1983
Jeffery W. Brown	March 30, 1983
Willie F. Franklin	March 30, 1983
Macon Hinton	March 30, 1983
Wayne M. Leonard	March 30, 1983
Ronald D. Newsome	March 30, 1983
Adenrele Odutola	March 30, 1983
Rickey Richardson	March 30, 1983

(b) Up to a maximum of 10 persons, plus one replacement for each person named in Paragraph 5(a) who is not appointed for any reason, black persons (if they have Civil Engineering or Civil Engineering Technology degrees) will (subject to availability) be appointed to the GCE job or the job they would now hold with the Highway Department in the absence of the EIT and associated requirements (including the recency of degree requirement), whichever is higher, provided that they satisfy the following conditions:

- (i) They applied during the period since the EIT requirement was adopted for the GCE job or they would have applied for the GCE job but for the EIT [\*49] requirement, and
- (ii) They were or would have been rejected because of not having EIT status, or other associated characteristics (including, but not limited to passing the FOE test and satisfying the recency of degree requirement) and
- (iii) They had degrees in Civil Engineering and Civil Engineering Technology at the time they applied or would have applied, and
- (iv) They would have been certified-out for GCE in the absence of their rejection for lack of EIT status or other associated characteristics as defined above.

(c) The credited service date of such of the persons specified in Paragraph 5(b) above as accept such offers will be agreed to by the parties before notice of the offer of employment is given to them, subject to the following:

- (i) No such credited service date shall be earlier than March 30, 1983.
- (ii) The standard for determining such service dates will be the approximate date each such person would have been appointed in the absence of the EIT and associated requirements

(d) The maximum number of persons provided for by Paragraph 5(a) and Paragraph 5(b) together is 20.

employment in the GCE job or in the job they would now hold with the Highway Department in the absence [\*48] of the EIT and associated requirements (including the recency of degree requirement), whichever is higher, with the following credited service dates:

#### **CREDITED SERVICE DATE**

March 30, 1983
March 30, 1983
March 30, 1983
March 30, 1983
March 30, 1983
March 30, 1983
March 30, 1983
March 30, 1983
March 30, 1983
March 30, 1983
March 30, 1983

(e) The State Personnel Department agrees to accept the appointment by the State [\*50] Highway Department of such persons named or specified in Paragraphs 5(a) and 5(b) above as accept such offer, notwithstanding the inconsistency of such appointment (if any) with the Alabama Merit System Act.

(f) **PENDING COURT APPROVAL:**

6. *Jobs for appointments pursuant to Paragraph 5:*

The job or jobs which the persons to be appointed pursuant to Paragraph 5 will be offered will be agreed to by the parties before notice of the offer of employment is given to them, subject to the following:

- (a) For such persons as have a registration with the Alabama State Board of Registration as a Registered Professional Civil Engineer as of the effective date of this Decree, the job to be offered will not be lower than GRE or higher than PCE-2.
- (b) For such persons as do not have such registration, the job to be offered will not be lower than GCE or higher than CE-5.

7. *Mechanics for the Paragraph 5 offers:*

(a) Within 45 days following the effective date of this Decree and agreement on the job or jobs to be offered, the Highway Department will offer appointments to each of the persons named in Paragraph 5(a) above.

(b) The offers of employment provided for herein will be [\*51] made by United States mail, addressed to the last known addresses of the persons listed in Paragraph 5(a) above (a) as set forth in the records of the State Personnel Department or (b) as provided to the State Highway Department and the State Personnel Department by the attorneys for the plaintiffs based on any search or research they may wish to engage in to locate such persons provided any address or address is to be provided to the

State Highway Department and the State Personnel Department within forty (40) days following the effective date of this Settlement Decree and agreement on the job or jobs to be offered. There will be no responsibility on any defendant to locate or to attempt to locate any of such persons.

(c) Such offers of appointment will include a designation for the use of such persons in accepting or declining the offers. There will be no option other than the options of accepting the offer or declining the offer. The offers must be accepted within such thirty (30) days following the mailing of the offers. Anyone who does not respond to the offer within such 30 day period will be deemed to have declined the offer.

(d) The offers of appointments provided for herein [\*52] will remain open for a period of thirty (30) days following the mailing of the offers. Any and all offers of employment not accepted in writing by the offeree shall expire and have no further force or effect following such thirty (30) day period.

(e) Such of the persons named in Paragraph 5(a) of this Article as accept the offers of employment and are employed at the State Highway Department pursuant to Paragraph 5 of this Article will be credited with employment date service as of March 30, 1983 for purposes of their starting salary level in the job. It is the intention of this provision that such of the persons named in Paragraph 5(a) as are appointed pursuant to Paragraph 5 of this Article of the Settlement Decree will have their starting salary upon such employment equal to the average of the current salaries of the persons in the Graduate Civil Engineer job who started in such job on or about March 30, 1983.

(f) The employment of any of such persons named in Paragraph 5(a) above shall not result in the displacement of anyone from any job, position, assignment, location, or shift and shall not result in the displacement of anyone from any section or bureau or division or district [\*53] or office.

8. *Notice to recruitment sources:* The Highway Department will notify all recruitment sources, including colleges with Civil Engineering and Civil Engineering Technology programs at which the Highway Department recruits for Engineers, that EIT status, associated tests, and the recency of degree requirement has been discontinued as a prerequisite for the GCE job.

9. *Newspaper notice:* The Highway Department will place a notice advising that EIT status and associated characteristics, including the FOE test and the recency of degree requirement, has been discontinued as a prerequisite for the GCE job in newspapers of general circulation and special circulation in black communities and will otherwise adequately publicize such changes in the electronic media in the following cities:

- Montgomery
- Birmingham
- Mobile
- Tuscaloosa
- Auburn

- Huntsville
- Dothan
- Tri-Cities Area
- Gadsden
- Anniston
- Alexander City
- Troy
- Grove Hill

Such notices and publicity shall invite black engineers to apply for employment with the SHD through the SPD. Notices and publicity in the print media shall [\*54] consist at, a minimum, of quarter 1/8 page advertisements designed to reach the maximum number of readers. Notices and publicity in the electronic media will be designed and placed in the most advantageous manner for achieving the attention of the public.

10. *Notice to applicants for GCE rejected because of the EIT requirement:*

(a) To the extent it is able to do so, the Personnel Department will provide to the Highway Department the names and last known addresses for all black persons with degrees in Civil Engineering and Civil Engineering Technology who applied for the GCE job and were rejected because of not having EIT status or any associated characteristics as defined above. The Highway Department shall make reasonable efforts to identify the names and last known addresses of all black persons with degrees in Civil Engineering and Civil Engineering Technology from the colleges and universities which it will recruit under the terms of this Consent Decree.

(b) The Highway Department will in turn give notice to such persons by certified mail, addressed to them at their last known address, advising them of the discontinuance of EIT status and associated characteristics as a [\*55] prerequisite for the GCE job and enclosing a blank application form so they can if they wish reapply with Personnel for the GCE job.

(c) Those who reapply and are certified-out by the Personnel Department to the Highway Department for the GCE job will be offered employment by the Highway Department in the GCE job, assuming they satisfy the qualification standards of the job and, if they did not apply for the GCE job in the past, can show a reasonable probability that they would have applied in the absence of the EIT or associated requirements, including, but not limited to, the FOE exam and the recency of degree requirement.

(d) Those not offered employment and hired in accordance with Paragraph (c) above would remain on the register under the conditions of the Register Purging provisions above.

11. *Age Restrictions:* The defendants will not utilize any criteria or selection procedure in relation to black applicants which has the purpose or effect of preferring scoring, ranking or restricting eligibility of black applicants because of the date of their

education, their age or any other item related to time or age which may perpetuate past patterns of underutilization of black [\*56] applicants.

#### ARTICLE FOURTEEN SELECTION PROCEDURES

##### 1. No new or more demanding standards:

(a) Black applicants and employees will not be subjected to employment criteria or procedures for hiring or promotion that are more difficult or demanding than those applied to white employees in the period since January 1, 1979 unless such more difficult or demanding criteria or procedure is shown by Highway to satisfy and be valid within the meaning of the Uniform Guidelines on Employee Selection Procedures.

(b) This does not mean that the job performance of black employees could not be evaluated by the revised Performance Appraisal procedure in effect or any future revision.

##### 2. Assignment of duties:

(a) To the extent practicable, the duties and responsibilities of higher classified jobs will be assigned on a proportionately equal basis to black employees compared with white employees in the same lower classified jobs.

(b) The Highway Department will to the extent practicable not assign duties in such a way that any employee will gain an advantage in promotions, including reclassification, over other employees in the same classification.

##### 3. Job duties which better prepare [\*57] employees:

(a) Within 90 days following the effective date of this Settlement Decree, the Highway Department and the Personnel Department will identify the job assignments or duties within a job classification which would better prepare an employee for examination or promotion (including reclassification) than other assignments or duties within such classification.

(b) The assignments and duties identified will include, but not be limited to, any assignment or duty which would receive a greater value or number of points in a T & E rating, a classification or pay review, or in selection from a COE.

(c) For each assignment or duty so identified, the Highway Department will, to the extent practicable, develop a means for assuring that employees on the job are periodically rotated into such assignments and duties and that black employees are assigned to such duties and assignments at rates proportional to their representation in the job classification.

#### ARTICLE FIFTEEN RECLASSIFICATION AND REALLOCATION

1. *Reclassification program:* Following the effective date of this Decree, the following steps will be taken:

(a) All employees then working for the Highway Department in the [\*58] classified service will be provided with a Form 40 on

which they may list the job duties which they are performing and the percentage of time spent on each such job duty. Such filled-out Form 40's will be subject to review and approval or revision by such employee's supervisor or supervisors. Any disagreement will be resolved by a job study analysis by the Personnel Department, subject to challenge by plaintiffs' counsel.

(b) To the extent that such completed Form 40's establish that the subject employee is spending a majority of their working time in the performance of the duties and responsibilities of a higher job classification, or is spending an amount of time on such duties and responsibilities substantially equal to that of a majority of incumbents in such higher job classification, the Highway Department will request the Personnel Department to reclassify such employee to the higher job which is most appropriate for the duties and responsibilities on which the employee is spending a majority of his or her working time, and the Personnel Department will approve such request if such request is consistent with the findings of Personnel's classification review and its classification [\*59] plan.

(c) Laborers who are working at the Highway may utilize the procedure described in Paragraph 1(a) above to obtain permanent status in the appropriate merit system classification after completion of one year of satisfactory service.

(d) All Laborers who are actively employed and have successfully performed the position of Laborer for one year as of the effective date of this Decree shall be reclassified to the HMT or EA position which is most similar to the duties they have performed as a Laborer on a regular basis.

(e) In the future, all Laborers who have successfully performed the position of Laborer for one year shall be reclassified to the HMT or EA position which is most similar to the duties they have performed as a Laborer on a regular basis.

(f) Nothing contained in this Paragraph 1 will apply to seasonal Laborers.

2. *Limit on filling jobs by reallocation:* A permanent opening in a classification may not be filled by reallocation when a black eligible is on the register for the class to which the position is being reallocated and such black eligible is (a) ranked higher or tied on the Register with the person to be reallocated or (b) would appear on a COE form [\*60] from that Register if the person to be reallocated were ranked first on the COE.

3. *Multi-Grade Jobs:* The following steps will be taken by the defendants:

(a) A job classification study will be conducted by the State Personnel Department encompassing the job classifications at Highway in a multi-grade series. Such study will commence with the following multi-grade jobs:

-- Engineering Assistants

-- Civil Engineers



- Professional Civil Engineers
- Highway Maintenance Technicians and Highway Maintenance Superintendent
- Right-of-Way Specialists
- Project Cost Auditors

(b) In the event such job classification study discloses that existing distinctions in the levels of multi-grade jobs do not reflect actual differences in duties, responsibilities, or qualifications, the jobs will be collapsed or restructured so that (i) they will reflect the actual distinctions, if any, shown by the study and (ii) are capable of being administered and utilized so that only persons occupying that classification perform the duties associated with it on a regular or non-emergency basis.

(c) Any restructuring of multi-grade jobs will likely involve reducing the [\*61] number of grades and broadening the pay ranges within the newly defined classification[s]. Such restructuring shall be implemented in a way that the opportunities for black employees to advance, and for the defendants to achieve the goals and purposes of this Decree, are enhanced and not diminished.

(d) In the event that the study results in the consolidation of classes (e.g., HMT-1 and HMT-2), all persons will be assigned to pay ranges appropriate to their years of service, provided that black employees shall not be downgraded or have a reduction in pay as a result of the reclassification study unless it is demonstrated by the Highway Department that they have not performed after being given the opportunity to do so, and are not capable of performing with reasonable training, the duties and responsibilities of the job classification to which they are assigned.

*4. Duties within the job description:* The Highway Department will monitor the duties and responsibilities performed by employees with the goal of assuring to the extent practicable that at least 90% of the duties and responsibilities performed by employees on a regular or non-emergency basis are within the job description [\*62] for job they are holding.

#### *ARTICLE SIXTEEN TRAINING*

*1. Temporary special training program:* During the first calendar year following the effective date of the Settlement Decree, the Highway Department will develop and provide to all black employees a temporary special affirmative action training program with the goal of assisting such employees in progressing in career paths within the Highway Department. Such program will be provided again during the years 1997 and 1999.

*2. Regular Training Courses:* During the term of this Settlement Decree, the State Highway Department will offer training courses to employees subject to and in accordance with the provisions of the following subsections:

(a) The employees to whom such training courses will be offered will be all Highway Department employees who are working,

during the calendar year in which the courses are offered, on a merit system job and have worked at least 540 hours of work during such year or the prior year on such job; provided, however, that Laborers will be treated the same as all HMT's for purposes of eligibility for such training courses.

(b) The training courses to be offered to such employees are set forth [\*63] in the attached Appendix to this Settlement Decree and a course or courses designed to clarify and update black employees on the procedures to be followed and qualifications, training, and experience to be credited in filling higher classified jobs within the Highway Department.

(c) The Highway Department will monitor the enrollment of employees taking training courses in order to ensure to the extent practicable that interested black employees are receiving their fair share of participation in such training courses.

(d) The training courses to be offered pursuant to the Training section of the Settlement Decree will be started within 120 days after the effective date of the Settlement Decree and thereafter will be offered on an annual basis.

3. The training courses provided for by this Article will be offered to the employees eligible therefore, with such employees having the option to accept or decline the training courses. Offers and declinations of training opportunities shall be documented in writing and signed by the affected employee.

#### *ARTICLE SEVENTEEN POLICY AGAINST RACIAL HARASSMENT*

*1. Policy:* The Policy Against Racial Harassment promulgated by the [\*64] Highway Director in October 1992 will remain in effect. Such policy will be disseminated to employees by being posted on bulletin boards customarily used for notices to employees.

*2. Training:* The Highway Department will develop and implement a training program to educate all employees on the laws of the United States regarding EEO and the policy of the Highway Department against racial harassment. Such training will include a training course in the policy against racial harassment modelled on the Highway Department's training course in the policy against sexual harassment.

#### *ARTICLE EIGHTEEN RELATIVES*

1. No preference will be given to any known relative of any current State Highway Department employee.

2. It is recognized that while the employment of relatives is not in and of itself unlawful, the giving of preference to relatives can under certain circumstances constitute a violation of Title VII of the Civil Rights Act. Accordingly, the State Highway Department shall monitor and to the extent practicable identify persons who are related to current employees of the State Highway Department to ensure that no person is shown preference in hiring or promotion within State [\*65] Highway Department by reason of being a known relative of a current employee of the

State Highway Department. In those cases where a relative of an employee of the State Highway Department is employed or promoted, the State Highway Department will maintain such records as are necessary to document the basis for the non-hiring or non-promotion of any black applicants who are equally qualified for the position or the promotion.

#### ARTICLE NINETEEN GENERAL

*1. Frazer/Ballard:* Defendants remain bound by the injunctive and declaratory relief entered in *U.S. v. Frazer (now Ballard)*.

*2. EEO Monitor:* Within 90 days following the effective date of the Settlement Decree, the Highway Department will assign a qualified employee answerable directly to the Highway Director and stationed in Montgomery, whose primary responsibilities will consist of (a) monitoring compliance with the terms of the Settlement Decree, and (b) assisting both the Highway Department and the Personnel Department in carrying out the terms of the Settlement Decree. The person to be assigned as the EEO Monitor pursuant to this Paragraph 2 is Ron Green. In the event Mr. Green is unable or unavailable to continue [\*66] to serve in this position at any time during the term of this Decree, the Highway Department will consult with the plaintiffs' attorney concerning his replacement.

*3. EEO Program:* The Highway Department's Equal Employment Opportunity Program will be enhanced and administered in a manner agreed between the parties.

*4. Reports:* The Highway Department and the Personnel Department will make quarterly reports on their efforts to comply with the Settlement Decree in the format set forth in the attached Appendix . Such reports will be filed with the Court with a copy to plaintiffs' counsel. Such reports will be filed throughout the duration of this Decree to December 31, 2000, provided that if all or any part of this Decree is extended, the plaintiffs will have the right to petition the Court to extend the reports.

*5. Records:* The Highway Department and the Personnel Department will permanently retain all records concerning the implementation of the Consent Decree for a period of 5 years following the expiration date of the Consent Decree. Such records would be available to plaintiffs' counsel for inspection and copying for a period of 5 years following the expiration [\*67] date of the Settlement Decree.

#### *6. Monitoring:*

(a) Plaintiffs' counsel will be entitled to contact and request information from the Highway Department and Personnel Department during the term of the Settlement Decree to monitor their compliance with the terms of the Decree, and the Defendants will comply with such requests to the extent reasonable. All requests relating to the development and implementation of policies, procedures, systems, rules, appointments, studies shall be deemed reasonable. Such requests are to be in writing with copies thereof to counsel for the defendants. The plaintiffs' counsel shall have the right to review the efforts at compliance and implementation of this Decree and shall be furnished with the information necessary to such review

upon request. The defendants will consider in good faith the comments of the plaintiffs' counsel.

(b) Any provision of this Decree which provides for a right of plaintiffs' counsel to review and comment on efforts at compliance or implementation shall be subject to challenge by the plaintiffs'.

(c) The parties will have the right to seek to enforce the provisions of this Decree by filing motions with the Court. The provisions [\*68] of this Decree, and the issues challenged in the case, have been premised upon the existence of the prior remedies ordered in the *Frazer/Ballard* case and, to the extent that any future acts or omissions violate the remedies ordered in *Frazer/ Ballard*, the plaintiffs will be entitled to enforce such remedies in this case in the same way that they are entitled to enforce the remedies of any other provision of this Decree.

(d) It is the intent and purpose of this Decree to undo the effects of the past practices which have been the subject of this case and Decree and to prevent further practices which may perpetuate such efforts or otherwise discriminate against the plaintiffs or the class they represent. To the extent that this Decree fails to achieve the intent and purpose for which it has been entered, the parties may seek further relief from the Court.

(e) Plaintiffs' counsel will be entitled to reasonable costs and fees for monitoring compliance with the Settlement Decree, including any expert witness fees. Plaintiffs' counsel will provide documentation of the number of hours spent, the functions performed, and the costs incurred on a quarterly basis. Subject only to the [\*69] accuracy of such documentation and the reasonableness of the amount requested, the requested amount would be paid within 30 days of submission. For routine monitoring, but not for the resolution of disputes, the maximum caps will be \$ 10,000 per year for attorneys' fees, expenses and costs and \$ 5,000 per year for expert witness fees, expenses, and costs. Amounts of fees within the limits of such caps will not be contestable by the defendants. The term "costs" will include normal billable expenses, including expert witness fees, as provided under the Civil Rights Act of 1991. Disputes will be resolved by the Court.

(f) The plaintiffs' attorney will have the right to petition the Court to extend this Paragraph 6 and any or all sub-paragraphs thereof beyond December 31, 2000.

*7. Complaint procedure:* Within 180 days of the effective date of this Decree, the Highway Department will develop and implement an enhanced complaint procedure which assures that all discrimination complaints are processed without fear and reprisal within established time limits and that appropriate action is taken following decisions. Such procedure will be submitted to plaintiffs' counsel for review and [\*70] comment at least 30 days prior to its implementation.

8. No reference in this Decree to existing job classes or job groupings will be construed to restrict Defendants' ability to modify or abolish such classes or groupings, provided that the plaintiffs will be given prior notice and the opportunity to object

and to seek Court review in this action prior to implementation of such changes.

9. In developing validation efforts directed to minimum qualifications or examinations, and in developing revised examination announcements, Personnel will (a) document its efforts in writing, (b) consult with the attorney for the plaintiff class regarding the selection of its psychologists and (c) consult with the attorney for the plaintiff class and any psychologist or other expert designated by such attorney for such purposes. Prior to implementing the results of such efforts, Personnel will make the documentation of its projects available for review and comment by plaintiffs' attorney and consultants.

*10. Duration:* The duration of the Consent Decree is December 31, 2000. The Court retains jurisdiction to decide any and all questions or disputes which arise under this Decree during such period [\*71] or any extension period. The plaintiffs will have the right to seek extension of the duration of the Consent Decree.

*11. Notice of the proposed settlement:* The provisions of the Civil Rights Act of 1991 will govern with respect to notice and objections and hearing concerning the Settlement Decree.

*12. Effective date:* The phrase "the effective date of the Settlement Decree" means the date 35 days following the final approval of the Settlement Decree by the Court.

13. Except to the extent expressly provided otherwise, all of the terms and provisions of this Decree shall operate prospectively only beginning with the effective date of the Decree.

**14. PENDING COURT APPROVAL:**

**15. PENDING COURT APPROVAL:**

16. Subject to the provisions of this Decree permitting or requiring further proceedings, including but not limited to, Articles 20 and 21, this Decree constitutes full and complete relief on all claims, causes of action, and allegations which have been asserted in this action.

17. All parties agree and stipulate that there will be no appeal from this Consent Decree or from any ruling, order, or decision entered by the Court in the case relating to any issue [\*72] or subject encompassed within the terms of this Decree. Nothing herein shall prohibit the non-class employees or any other person not a party to this Decree from having the right to appeal any interpretation, ruling, decision or order.

18. The State Highway Department and the State Personnel Department will continue to comply with all laws and regulations applicable to equal opportunity in employment.

19. Nothing in this Consent Decree shall be construed to permit the defendants to violate any law or regulations. In particular, the State Highway Department and the State Personnel Department remain obligated to follow Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, all applicable Federal regulations, and all applicable Court orders with respect to all employment practices except as otherwise set forth hereinabove.

*ARTICLE TWENTY FURTHER PROCEEDINGS REGARDING CLASS MEMBERS*

1. Further negotiations and proceedings are required to resolve the claims for monetary and non-monetary remedies for individual members of the class (including the named plaintiffs and intervenors), provided however, that this Decree does not in and of itself entitle any such class member [\*73] to such remedies. Such claims shall be resolved first by settlement negotiations and then, to the extent not resolved by settlement negotiations, by the Court.

2. The parties will make all reasonable efforts to resolve all such claims of the members of the class (including the named plaintiffs and intervenors) according to a schedule to be mutually agreed upon within 10 days after preliminary approval of this Decree by the Court or, in the event the parties cannot mutually agree on such schedule within such 10 day period, the Court will enter an Order embodying a schedule. Regardless of whether the schedule is mutually agreed upon by the parties or embodied in an Order entered by the Court, such schedule shall contain specific deadlines for the exchange of information and for offers and counter-offers to enable settlement negotiations on such claims to take place within 90 days after the effective date of this Consent Decree and, in the event such settlement cannot be achieved, for trial on that phase of the case to commence no later than 180 days after the effective date of this Decree.

3. Such schedule shall be presented to the Court for approval or modification, and once finalized [\*74] shall be entered as an Order of the Court. In the absence of agreement on such schedule within 10 days of the preliminary approval of this Decree, the Court will enter its own schedule aimed at settlement negotiations taking place within 90 days after the effective date of this Decree and scheduling that phase of the trial of this case to commence no later than 180 days after the effective date of this Decree.

*ARTICLE TWENTY-ONE ATTORNEYS' FEES*

1. The parties will endeavor to reach agreement on the amount of attorneys' fees, costs, and expenses for services and expenses up to the then current date.

2. If the parties have been unable to agree upon the amount of interim fees and expenses before the effective date of this Decree, the plaintiffs will submit their claim for fees to the defendants within three days of the effective date of this Decree and, within twenty-one days (21) thereafter, the defendants shall in good faith stipulate to the amount of such fees and expenses which they would urge the District Court to find to be reasonable and shall pay such uncontested sum to the plaintiffs' attorneys within thirty (30) days of the effective date of this Decree or at such other [\*75] time as is mutually agreed to. As to any remaining sums claimed by the plaintiffs' counsel for fees and expenses, the defendants will, within twenty-one (21) days of receipt of plaintiffs' claim for fees, identify the hours they contest as unreasonable or otherwise not awardable with a short statement of the basis for each such contention, identify the hourly rate for each attorney representing the plaintiff which it

would stipulate to be reasonable and urge the District Court to adopt, identify any other contentions which it would make regarding the amount of fee which should be awarded to each attorney appearing on behalf of the plaintiffs and identify any expense items which it contests as unreasonable or non-reimbursable with a short statement of the basis for each such contention. In the event that the fees and expenses must be determined by the Court, the parties stipulate that the proposed Consent Decree, if adopted by the Court, constitutes full relief on all claims asserted in this action and that the plaintiffs are the prevailing party as to all issues and claims in this lawsuit. In the event that the Court must determine the amount of fees and expenses, the parties will [\*76] in good faith attempt to stipulate to the following items: (a) the reasonable hourly rate which should be paid for the services of each attorney representing the plaintiffs; (b) the reasonable number of hours expended by each such attorney on behalf of the plaintiffs; (c) the reasonable amount of expenses incurred on behalf of the plaintiffs that

should be reimbursed by the defendants. The class counsel (the law firm of Gordon, Silberman, Wiggins & Childs) shall be entitled to reasonable fees and expenses for work done after the preliminary approval of the Decree on behalf of the plaintiffs and the plaintiff class. If agreement cannot be reached, the amount of attorneys' fees and expenses will be resolved by the Court as soon as practicable (from the Court's standpoint). The Civil Rights Act of 1991 will govern with respect to allowable costs and expenses.

DONE and ORDERED this the 16th day of March, 1994.

MYRON H. THOMPSON

CHIEF JUDGE

UNITED STATES DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF ALABAMA