

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RECEIVED

JUN 8 1981

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JAMES E. VANDEGRIFT, CLERK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	75-P-0666-S
v.)	
)	
JEFFERSON COUNTY, et al.,)	
)	
Defendants.)	
)	
JOHN W. MARTIN, et al.,)	
)	
Plaintiffs,)	CIVIL ACTION NO.
)	74-Z-17-S
v.)	
)	
CITY OF BIRMINGHAM, et al.,)	
)	
Defendants.)	
)	
ENSLEY BRANCH OF THE N.A.A.C.P.,)	
et al.,)	
)	
Plaintiffs,)	
)	CIVIL ACTION NO.
v.)	74-Z-12-S
)	
GEORGE SEIBELS, et al.,)	
)	
Defendants.)	

CONSENT DECREE WITH THE JEFFERSON COUNTY PERSONNEL BOARD

These consolidated actions were brought by the United States and certain private plaintiffs against the Jefferson County Personnel Board, and other defendants not included within the terms of this Decree, to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., the State and Local Fiscal Assistance Act of 1972, as amended, 31 U.S.C. 1221, et seq., the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3766(c)(1), the Civil Rights Acts of 1866 and 1871, 42 U.S.C. §1981 and §1983, and the Fourteenth Amendment to the Constitution of the United States. In their Complaints, the plaintiffs allege, inter alia, that the Jefferson County Personnel Board (hereinafter the "Personnel

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Board" or "Board"), in carrying out its employee selection functions for Jefferson County and other jurisdictions within Jefferson County, has engaged in a pattern or practice of discrimination based on race and sex.

The Personnel Board denies it has engaged in any pattern or practice of discrimination or other types of discrimination on the basis of race or sex in carrying out its employee selection functions. However, the Board realizes that certain facts concerning past practices of the Personnel Board might have given rise to an inference that such a pattern or practice existed, and that this Court entered a Decision and Order in these consolidated actions on January 10, 1977, concerning Personnel Board testing practices for entry level police, deputy sheriff and fire positions, 14 FE2 Cases 570, aff'd in part, reversed in part and remanded, 616 F.2d 312 (5th Cir. 1980), cert. denied, 49 U.S.L.W. 3443 (Dec. 15, 1980). For the purposes of avoiding further litigation, and in resolution of the dispute over the claims of discrimination against the Personnel Board, the United States, the plaintiffs who are signatories to this Decree, and the Personnel Board are now willing to agree to the entry of this Consent Decree. The plaintiffs and the defendant Jefferson County Personnel Board wish to avoid the delay and expense of further litigation and to insure that any alleged disadvantages to blacks and women that may have resulted from any alleged past discrimination against them in their obtaining employment and advancement are remedied so that equal employment opportunities will be provided to all. The plaintiffs who are signatories to this Decree and the Personnel Board, by agreeing to the issuance of this Decree, waive any findings of fact and conclusions of law on all outstanding issues pertaining solely to the Personnel Board's liability in these consolidated actions, except for costs and attorneys fees. The Personnel Board agrees to negotiate with the plaintiffs in the Martin case regarding the amount of attorneys' fees and costs to plaintiffs in the Martin case and will negotiate with plaintiffs regarding the amount of such fees. If the

parties are unable to reach agreement on the amount of such fees and costs, the Court will resolve the dispute. The United States waives its right to recover costs against the Personnel Board.

By entering into this Decree the plaintiffs do not waive their rights to have this Court determine the liability and remedial obligations, vel non, of any other defendant based upon such defendant's use of Personnel Board recruitment and selection practices or any other employment practices which have been or remain the subject of litigation in these actions. This Decree shall not however constitute an adjudication or admission by the Personnel Board of any violation of law or findings on the merits of these cases.

Now therefore, on the basis of the foregoing representation of the United States, and counsel for the other plaintiffs who are signatories to this Decree and the Personnel Board, and all trial proceedings and discovery filed herein to date, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. GENERAL PROVISIONS

1. The defendant Jefferson County Personnel Board and its officers, agents, employees, successors and all persons acting in concert with them or any of them in the performance of their official functions are subject to the terms of this Consent Decree, and shall refrain from engaging in any act or practice which has the purpose or effect of unlawfully discriminating against any employee of, or any applicant or potential applicant for employment with, those jurisdictions served by the Personnel Board because of such individual's race or sex. The defendant Jefferson County Personnel Board and its officers, agents, employees, successors and all persons acting in concert with them or any of them in the performance of their official functions, shall not discriminate against any employee or applicant for employment in certifying for hire or promotion, in upgrading, training, assignment or discharge, or with respect to compensation, terms and conditions or privileges of employment, because of such individual's race or sex.

2. Remedial actions and practices required by the terms of, or permitted to effectuate and carry out the purposes of, this Consent Decree shall not be deemed discriminatory within the meaning of paragraph 1 above or the provisions of 42 U.S.C. 2000e-2(h), (j), and the parties hereto agree that they shall individually and jointly defend the lawfulness of such remedial measures in the event of challenge by intervention or collateral attack. If any collateral lawsuit involving this Consent Decree arises in state court, then the Personnel Board shall notify counsel for the plaintiffs and remove such action to the United States District Court.

II. TESTING AND OTHER SELECTION PROCEDURES

A. In General

3. All phases of the Personnel Board's testing and other selection and certification procedures for both hires and promotions shall continue to be reviewed periodically by the Board to assure that such procedures comply with the standards and requirements of the Uniform Guidelines on Employee Selection Procedures, 43 F.R. 38250 (August 25, 1978) (hereinafter "Uniform Guidelines"). More specifically, the Personnel Board shall utilize qualifications, tests or other selection standards or procedures which the Board can demonstrate either have no adverse impact or have been validated in accordance with the Uniform Guidelines. In this regard, the Personnel Board shall continue to apply statistical tests to, and otherwise conduct analysis of, the various data generated in the course of using or assessing the validity of any such qualifications, tests or other selection standards or procedures for the purpose of making a good faith effort to determine whether there are any alternative measures, including revisions in scoring and ranking procedures, which may be followed which will reduce or eliminate any adverse impact on blacks or women, and which would continue to provide a sufficient pool of qualified candidates for certification and selection in accordance with the goals of this Decree.

B. Written Tests In Specific Jobs

4. The Personnel Board may continue to administer its current written tests for the jobs of Account Clerk, Accountant, Auditor, Intermediate Clerk, Revenue Examiner, Secretary, Senior Clerk, Stenographer, Police Sergeant and Sheriff's Sergeant for the certification of candidates for those jobs, provided that such certifications are in conformity with the interim certification goals for any such jobs for which a certification goal is established by paragraph 24 of this Decree.

5. The Personnel Board shall no longer administer any of the written tests which were challenged by the plaintiffs in these actions to establish eligibility lists for any of the following jobs:

- | | |
|---------------------------|------------------------------------|
| 1. Animal Control Officer | 5. Heavy Equipment Operator |
| 2. Zoo Keeper | 6. Waste Water Treatment |
| 3. Automotive Mechanic | Plant Operator |
| 4. Engineering Aide | 7. Construction Equipment Operator |

The Personnel Board may continue to use any eligibility lists based in whole or in part upon the scores applicants received on any of the challenged written tests for the jobs identified above if such lists remain in effect on the date this Decree is approved and entered by the Court. However, any certifications from such eligibility lists shall be in conformity with the interim certification goals set forth in paragraph 24 below.

6. Any qualifications, tests or other selection standards or procedures used for the establishment of new eligibility lists and/or certifications in the jobs listed in paragraph 5 shall be designed so as to eliminate or reduce any adverse impact in certifications against blacks, and shall be consistent with the standards and requirements of the Uniform Guidelines as specified in paragraph 3. Certifications from such new eligibility lists shall be consistent with the goals for the certification of blacks as set forth in paragraph 24 below.

7. The Personnel Board may continue to administer the 20-B firefighter test and the 10-C police officer test provided that certifications are in compliance with this Court's Order of Jan-

uary 10, 1977, which is incorporated herein as part of this Consent Decree. The plaintiffs reserve the right to petition the Court for supplemental relief under that Order as incorporated herein in the event that the percentage of black applicants for police officer/deputy sheriff positions falls below 35% and the percentage of black applicants for firefighter positions falls below 25%.

C. High School Education Requirements

8. The Personnel Board shall no longer require that applicants for the jobs listed below possess a high school diploma (or G.E.D. equivalent) in order to be eligible to be considered for employment in those positions, unless the Personnel Board can demonstrate in accordance with the provisions of paragraph 3 of this Decree that such selection criteria comply with the requirements of the Uniform Guidelines.

1. Zoo Keeper
2. Engineering Aide
3. Firefighter
4. Power Distribution Helper
5. Police Radio Dispatcher/Radio Dispatcher
6. Waste Water Treatment Plant Operator

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D. Promotional Potential Ratings

9. The Personnel Board may continue the use of its current promotional potential rating system in departments where it is shown to have no adverse impact. The Board shall discontinue the use of its current promotional potential rating system in the following departments of the following jurisdictions where such ratings have been demonstrated to have had an adverse impact on blacks.

<u>Jurisdiction</u>	<u>Department</u>
City of Birmingham	Streets & Sanitation
City of Birmingham	Police
City of Birmingham	Fire
City of Birmingham	Parks & Recreation
Jefferson County	Cooper Green Hospital
Jefferson County	General Services

10. The Personnel Board further agrees to discontinue the use of its current promotional potential rating system to determine eligibility for promotion in any other department where based upon any two successive rating cycles (one cycle consisting of 6 months) there is evidence of adverse impact against blacks. In determining adverse impact under this subpart the parties agree to rely upon section 4D of the Uniform Guidelines.

11. If the Personnel Board seeks to institute any new promotional potential rating system, it shall first be instituted on an experimental basis in a department or departments selected by the Personnel Board. As soon as data becomes available, the Personnel Board shall serve upon counsel for the plaintiffs a report reflecting the impact of the system on blacks. This report shall be submitted in conformity with the reporting requirements of paragraph 50 below.

If such report discloses that this new rating system has an adverse impact on blacks, then the Personnel Board shall, as soon as practicable, serve upon counsel for the plaintiffs a copy of any studies and support data bearing upon the validity of this system under the Uniform Guidelines. Compliance with the requirements of this paragraph shall not relieve the Personnel Board or a defendant jurisdiction from any liability under Title VII and this Decree which may result from the interim or permanent use of a new rating system which has an adverse impact on blacks.

12. Should any of the plaintiffs have objection to any such promotional potential rating system, they may file such objection with the Court within 60 days of their receipt of the documents identified in paragraph 11 above, or within 60 days of their receipt of copies of the ratings for the first two rating cycles. If such an objection is filed, the Personnel Board shall not utilize or shall cease utilizing any such promotional potential rating system unless and until approved by the Court.

E. Time In Grade Requirements For Promotions In Police, Sheriff and Fire Department Positions

13(a). The Personnel Board shall not require police officers and deputy sheriffs to serve more than three years uninterrupted service in rank (or two years uninterrupted service in the rank for candidates who have two years of college credits) in order to be eligible to take the promotional examination for police sergeant or sheriff's sergeant, nor shall it require police sergeants and deputy sheriff sergeants to serve more than two years uninterrupted service in rank in order to be eligible to take the promotional examination for police lieutenant or sheriff's lieutenant. Employees who have obtained permanent status as police lieutenant or sheriff's lieutenant shall not be deemed ineligible for promotion to the next higher rank based upon any minimum length of service or time in rank. The Personnel Board agrees that it shall not announce a new promotional examination for police sergeant or sheriff's sergeant for the City of Birmingham or Jefferson County for a period of at least one year following the entry of this Decree.

13(b). The Personnel Board shall not require firefighters to serve more than two years uninterrupted service in rank in order to be eligible to take the promotional examination for the position of fire lieutenant. Employees who have obtained permanent status as fire lieutenant or fire captain shall not be deemed ineligible for promotion to the next higher rank based upon any minimum length of service or time in rank.

13(c). For purposes of subparagraphs (a) and (b) the term "uninterrupted service" shall include any time spent as a probationary employee.

F. Height-Weight Requirements

14. The Personnel Board previously discontinued the use of minimum height and weight requirements as selection criteria for any classified service position. The Personnel Board may continue to administer its class A, class B and class C physical standards for classified service positions provided that no minimum height or minimum weight requirements are followed.

G. Eligibility To Apply For Promotions To Certain Jobs

15. The Personnel Board may prescribe that in combination with or in lieu of taking a promotional examination for the positions of Public Works Supervisor, Sanitation Inspector or Construction Supervisor that applicants for such positions be required successfully to complete a job related training program of no more than 12 weeks duration for that job. This program may be extended for individuals who fail successfully to complete such training within the prescribed time. Such program is to be under the direct supervision of the Personnel Board as to design, content, and related logistics. If any tests are used and administered as part of such program they shall be designed and administered in accordance with the provisions of paragraph 3 above. The Personnel Board may utilize the resources of any of the separate jurisdictions so affected in the preparation and conduct of such training program. The Personnel Board may also institute training programs for classified or unclassified employees in other positions identified in paragraphs 16 through 20 below, provided such training programs are established and implemented in accordance with the provisions of this paragraph. Eligibility for any training programs established by the Board under this paragraph shall be open to all employees in the lower rated classifications as specified by paragraphs 16 through 20 below. Candidates for such training who are employed in the classified or unclassified service shall not be required to incur any reduction in their hourly or salaried wage rates or any loss of seniority in order to receive such training. Any training programs established by the Personnel Board under this paragraph shall not be used or maintained so as to interfere with the Board's ability to meet the certification goals set forth in paragraph 24.

16. In order to apply to take a promotional examination in the jurisdiction where employed for the position of Public Works Supervisor or Construction Supervisor, each applicant must have permanent status in one of the following classifications: Truck Driver, Refuse Truck Driver, Labor Supervisor, Heavy Equipment

Operator, or Construction Equipment Operator. To apply to take the promotional examination for the position of Sanitation Inspector, an employee must have permanent status as a Truck Driver or Semi-skilled laborer.

17. If the Personnel Board establishes a classification of Refuse Collection Supervisor, then promotional eligibility shall be limited to employees with permanent status as Truck Driver and Refuse Truck Driver. Certifications to such classifications shall be in accordance with the goal for Public Works Supervisor as set forth in paragraph 24. The pay grade and steps within grade for that classification shall be set and maintained at no less than the pay grade and steps within grade for the classification of Public Works Supervisor. The Personnel Board may, if justified by future pay plan audits, raise the Refuse Collection Supervisor classification to a pay grade higher than that of Public Works Supervisor. If a Refuse Collection Supervisor position is established in the City of Birmingham, the number of Refuse Collection Supervisors shall be at least two fifths (2/5ths) of the total number of Public Works Supervisor positions in the City of Birmingham.

18. The Personnel Board shall permit any employee who has worked full-time in an unclassified laborer position for twelve consecutive months to apply to take a promotional examination in the jurisdiction where employed for the following classifications: Semi-skilled Laborer, Truck Driver, Refuse Truck Driver, Equipment Service Worker, Automotive Mechanic Helper. As used in this paragraph, the term laborer shall include the classifications of Building Service Worker, Laborer and Refuse Collector.

19. The Personnel Board shall permit any employee who has obtained permanent status as a Semi-skilled Laborer or Truck Driver to apply to take a promotional examination in the jurisdiction where employed for the following classifications: Truck Driver, Refuse Truck Driver, Labor Supervisor, Heavy Equipment Operator, Equipment Service Worker, Automotive Mechanic Helper.

20a. The Personnel Board shall permit any employee who has obtained permanent status as a heavy equipment operator, Refuse Truck Driver, or Labor Supervisor to apply to take a promotional examination in the jurisdiction where employed for the classification of Construction Equipment Operator. In addition, employees of the City of Birmingham who have obtained permanent status as truck drivers shall also be permitted to apply to take the promotional examination for Construction Equipment Operator in Birmingham.

20b. The Personnel Board agrees that it shall not certify any candidates for permanent, full time positions with the City of Birmingham until after this Court grants final approval to this Consent Decree in any of the following positions: Public Works Supervisor, Construction Supervisor, Construction Equipment Operator, Labor Supervisor, Heavy Equipment Operator, or Refuse Truck Driver.


21. Attached as Appendix A to this Decree is a list of incumbent employees of the Streets and Sanitation Department of the City of Birmingham. Immediately upon final approval of this Consent Decree by the Court, those individuals shall be certified for promotion to the first vacancy in the Streets and Sanitation Department in a permanent, full time position in the job listed next to their names. Such individuals shall not be required to take any further promotional examinations or training in order to be certified for promotion under this paragraph. As future vacancies arise in such jobs, the Board shall continue to certify these individuals for promotion until each such individual is promoted to such job, or declines an offer of promotion to such job. If any individual identified in Appendix A declines an offer of promotion by the City of Birmingham to the job listed next to his name, the Personnel Board shall be under no further obligation to consider that individual as eligible for priority certification for promotion under the terms of this paragraph. However, this shall not preclude or in any way adversely affect the right of any such person to apply for future promotional

opportunities in a classified service position under the Personnel Board's normal promotion procedures as modified by this Consent Decree.

III. SEX RESTRICTIONS IN JOB ANNOUNCEMENTS
AND CERTIFICATIONS

22. The Personnel Board shall not restrict any job announcements or certifications on the basis of sex except that the Board may continue to certify males to supervise male juvenile offenders at the Jefferson County Detention Home. The Personnel Board may establish a special medical examination to be given to applicants for nurses aide and laundry worker positions. Such examination shall be used solely to determine whether applicants for such positions are physically qualified to perform the duties of those jobs, and it shall not be used to discriminate in purpose or effect against female applicants.

IV. GOALS FOR BLACKS AND WOMEN

 The parties to this Consent Decree recognize that the decision to employ persons certified by the Personnel Board is left to the sole discretion of the appointing authority of each jurisdiction. For this reason, the Personnel Board agrees that it will continue to certify blacks and women in accordance with the goals of this Consent Decree to each of the jurisdictions currently served by the Personnel Board until such time as the employment of blacks in the jobs identified in paragraph 24 and of women in the jobs identified in paragraph 25 in each jurisdiction approximates the respective percentages in the civilian labor force of Jefferson County as reflected by the 1970 Federal Census. The parties agree to recognize any changes in those percentages which may come about as a result of the final publication of the 1980 Census.

24. Subject to the availability of qualified black applicants, the Personnel Board shall establish and attempt to meet an annual goal of certifying to each of the jurisdictions currently served by the Board black applicants at the rates set forth below or at the rate of black representation among applicants who meet

job related requirements to apply for such jobs, whichever is higher. The parties preserve the right to adjust, by agreement, any of those goals where it can be shown that a professional degree, license or certificate is required to perform the duties of any of the jobs referred to in this paragraph, and that these annual certification goals do not reasonably reflect the percentage of qualified blacks in the relevant labor market who possess such degrees, licenses or certificates.

<u>Job Classification</u>	<u>Certification Goal</u>
1. Accountant	33%
2. Account Clerk	33%
3. Animal Control Officer	33%
4. Auditor	33%
5. Automotive Mechanic	33%
6. Construction Equipment Operator	50%
7. Engineering Aide	33%
8. Heavy Equipment Operator	50%
9. Intermediate Clerk	33%
10. Labor Supervisor	50%
11. Public Works Supervisor (including Construction Supervisor and Landfill Supervisor)	50%
12. Refuse Truck Driver	50%
13. Revenue Examiner	50%
14. Secretary	33%
15. Senior Clerk	33%
16. Stenographer	33%
17. Truck Driver	50%
18. Waste Water Treatment Plant Operator	33%
19. Zoo Keeper	33%

With regard to certifications to the jobs of Police Sergeant and Sheriff's Sergeant, the Personnel Board agrees to certify sufficient numbers of qualified blacks to meet any promotion goals for this job established by a Consent Decree or litigated Decree between the United States and/or any other plaintiff and any other defendant in these consolidated actions in accordance with the provisions of paragraph 34 below.

25. Subject to the availability of qualified female applicants, the Personnel Board shall establish and attempt to meet an annual goal of certifying to each of the jurisdictions currently served by the Board qualified female applicants at the rates set forth ~~below or at the rate of female representation among applicants~~ who meet the job related requirements to apply for such jobs, whichever is higher. The parties preserve the right to adjust, by agreement, any of those goals where it can be shown that

a professional degree, license, or certificate is required to perform the duties of any of the jobs referred to in this paragraph.

female

<u>Job Classification</u>	<u>Certification Goal</u>
Drafter	15%
Engineering Aide	15%
Engineering Drafter	15%
Engineering Technician	15%
Firefighter	10%
Graduate Engineer	10%
Police Officer/Deputy Sheriff	25%
Police Radio Dispatcher*	20%
Radio Dispatcher*	20%
Revenue Examiner	20%
Security Officer	25%
Sr. Civil Engineer	10%
Stores Clerk	20%
Traffic Planning Technician	10%

* Certification goal only applies to those jurisdictions where this job has been previously restricted to males only. Those jurisdictions are: Fultondale, Gardendale, Midfield, Mountain Brook and Tarrant.

26. In filling any vacancies covered by paragraphs 24 and 25 above, the appointment of a black female shall count toward both black and female interim certification goals.

27. The parties recognize that the certification goal set by this Decree for female firefighters may not accurately reflect the availability of female applicants for this job assuming full compliance with the affirmative recruitment obligations set forth in paragraph 29 below. Accordingly, two years after the date of entry of this Decree the parties shall review the efforts of the Personnel Board to recruit female firefighters (as well as any such recruitment efforts conducted by any of the jurisdictions served by the Board), together with female applicant flow data for that job in order to determine whether the female certification goal should be raised or lowered to more accurately reflect the availability of females for this job.

28. The parties further agree to consider the establishment of an interim certification goal for females in the jobs listed below two years following the date of entry of this Decree. At that time, if recruitment efforts and/or applicant flow data support it, the parties shall negotiate appropriate interim certification goals for women in any or all of such jobs.

1. Building Inspector
2. Carpenter
3. Electrical Inspector
4. Electrician
5. Gas Inspector
6. Mains Service Worker
7. Maintenance Repair Worker
8. Painter
9. Power Distribution Helper
10. Plumber
11. Plumbing Inspector
12. Refrigeration & Heating Mechanic
13. Semi-Skilled Laborer
14. Voting Machine Mechanic
15. Waste Water Treatment Plant Operator
16. Waste Water Treatment Plant Worker

V. RECRUITMENT

29. The Personnel Board shall continue to operate a comprehensive recruitment program designed to meet the needs of the service and specific requirements set out in this Consent Decree. To meet these purposes, the Personnel Board, in addition to its own resources, shall have access to and utilize what other resources may be deemed appropriate and available from each and every jurisdiction and department thereof comprising the merit system subject to the Civil Service Act and terms of this Decree.

30. The Personnel Board will continue to engage in affirmative recruitment activities which are consistent with its obligation to take all reasonable steps to reach the goals set forth in this Decree, and will insure that the Personnel Board's policy of affirmative recruitment and non-discrimination in hiring is emphasized to blacks and women. Wherever feasible, the Board shall utilize newspaper, radio and other media of mass circulation in an effort to attract qualified applicants. The Board shall maintain regular contact with area high schools, technical and vocational schools, the Alabama Department of Employment Security and minority and women's organizations such as the Urban League and the NAACP. The Board shall continue to notify such schools and organizations of anticipated job vacancies in the classified service and shall send to them examination announcements sufficiently in advance of any scheduled examination to provide such schools and organizations a reasonable opportunity to refer qualified minority and female applicants. Such announcements

shall continue to specify that the Personnel Board is an equal opportunity employer.

31. The Personnel Board shall continue to insure that promotional examination announcements and announcements of training opportunities are issued and posted in conspicuous places within each jurisdiction and department reasonably in advance of any scheduled promotional examination or training opportunities in order to provide incumbents with a fair opportunity to apply for promotion or training and to adequately prepare for the promotional examination or training. In this regard, the Personnel Board shall insure that all persons eligible for training programs and promotional examinations have equal access to all books, articles, pamphlets, and other materials which are used for preparation for such examinations or training, and that these materials are made available to such persons reasonably in advance of any scheduled promotional examinations or training.

VI. THE UNCLASSIFIED SERVICE

32. Effective September 1, 1981, the Personnel Board shall recommend to the appropriate jurisdictions that all unclassified laborer positions with the exception of seasonal or temporary manual labor positions be brought into the classified service with all attendant rights, benefits, wages, and privileges presently accorded to classified employees. The Personnel Board will recommend that each employee who enters the classified service pursuant to the provisions of this paragraph shall be credited in his or her classified service position with all seniority previously accrued in the unclassified service as determined by the records of the governing body. Further, such seniority will be credited for all purposes including, but not limited to, layoff, pension, vacation and sick leave. Such credited seniority shall not require under this Decree any payments by a jurisdiction to a pension fund in excess of any amounts previously paid into such fund on behalf of the affected employee. Breaks in service shall not be computed in establishing an employee's seniority rights under this paragraph unless such break in service was occasioned by documented illness or other documented physical disability.

33. All current classified employees who previously entered the classified service from an unclassified laborer position either through promotion or reallocation shall likewise be credited immediately upon the entry of this decree with all seniority previously accrued in the unclassified service. Such seniority shall be computed and credited in the same manner as provided for in paragraph 32.

VII. ADOPTION OF AFFIRMATIVE ACTION PLANS

34. If a jurisdiction which is a defendant in these actions adopts, and the Court approves, a Consent Decree with the United States and/or any other plaintiff in these actions, or if the Court enters a litigated Decree in resolution of the claims of employment discrimination of the United States and/or any other plaintiff in these actions, which Decree establishes hiring and/or promotion goals for blacks or women for positions in the classified service, the Personnel Board shall seek to insure that it recruits and certifies sufficient numbers of qualified blacks and women to afford any such jurisdiction a reasonable opportunity to meet the goals of its Consent Decree. As a means of insuring that sufficient numbers of blacks and women are certified to meet the goal of this Consent Decree or a Consent Decree or litigated Decree with a defendant jurisdiction, the Personnel Board may certify at least three eligibles for any job vacancy in the classified service and, where necessary to meet such goals, may expand further the number of eligibles certified for a particular job vacancy.

The Personnel Board shall be afforded a reasonable opportunity to review a Consent Decree of another defendant prior to its approval by this Court. If the Board determines that even if it complies fully with the recruitment and testing provisions of this Decree, it will not be able to certify sufficient numbers of qualified blacks or women to afford another defendant a reasonable opportunity to meet a particular goal established by its Consent Decree, the Board may move the Court to relieve it of any liability under this paragraph concerning that particular goal.

The Board may not seek relief from liability under this paragraph concerning any goal(s) set by this Consent Decree or a Consent Decree of a defendant jurisdiction for any of the jobs identified in paragraphs 7, 24 and 25 of this Decree.

35. If a defendant jurisdiction fails or refuses to enter into a Consent Decree with the United States and/or any other plaintiff in this action, the Personnel Board retains the right to consider and approve or disapprove any affirmative action plans which may be submitted to the Personnel Board by any defendant jurisdiction pursuant to Rule 4.5(h) of the Board's Rules and Regulations. The parties recognize that any such affirmative action plans, if approved by the Personnel Board, shall not constitute a waiver by the plaintiffs of any of their claims of employment discrimination or appropriate relief against any such defendant jurisdiction in these consolidated actions.

VIII. INDIVIDUAL RELIEF

A. Back Pay

36a. The Personnel Board agrees to pay the sum of \$35,000 in full and complete settlement of the plaintiffs' claims against the Personnel Board for monetary relief. The Board shall deposit this sum in a trust account bearing interest at commercial rates within thirty (30) days after this Court gives provisional approval to this Consent Decree. In the event the Court refuses to give final approval to the Decree, this sum shall be returned to the Personnel Board with any interest accrued on such sum. This sum shall be used to compensate the class of blacks identified in Appendix B of this Decree. Back pay relief for the blacks identified in Appendix A of this Decree will be afforded under the Consent Decree with the City of Birmingham. The members of the subclass identified in Appendix B do not wave any rights they may have for monetary or other relief against any other defendants in these consolidated actions other than the Personnel Board.

36b. Each member of the class identified in Appendix B who files a timely response to the notice of right to participate in the back pay settlement and this Decree (Appendix F), shall receive a pro rata share of the \$35,000, provided that no such individual payments shall be made to any such person until that individual has filed with the Clerk of the Court a signed and notarized release in the form set forth in Appendix C.

B. Relief For Named Private Plaintiffs

37. The plaintiffs and the Personnel Board acknowledge that Ida McGruder, John Martin, Wanda Thomas, and Eugene Thomas (all named plaintiffs in Martin, et al. v. City of Birmingham, et al.) (Civil Action No. 72-17-S) were previously certified as qualified for certain positions with the City of Birmingham and/or Jefferson County. In the event that the City of Birmingham and/or Jefferson County agrees to offer employment opportunities to any of the above named individuals, the Personnel Board authorizes their hiring without need for further certification.

C. Notification of Right To Present A Claim
for Individual Relief

38. Within ten (10) days after the Court grants final approval to this Consent Decree, written notices will be given by the Personnel Board by certified mail to each of the class members identified in Appendix B. Notice to such individuals shall be sent to their last known address. The form of the notice is attached as Appendix D. Proof of claim forms (attached as Appendix E) will be included with the individual notices to class members.

39. Each class member shall be required to file his or her proof of claim form with the Clerk of the Court within a date no more than sixty (60) days from the date of mailing. Within forty-five (45) days after receipt of all timely proof of claim forms, counsel for the plaintiffs will submit to the Court and counsel for Personnel Board a report listing each class member who, in their view, is entitled to participate in the back pay provisions of this Consent Decree. In no event will the sum of

the individual monetary awards to be made under this Decree exceed the sum of \$35,000, plus any interest accrued thereon.

40. Within twenty (20) days after the submission of the plaintiffs' report, the Personnel Board shall notify by certified mail each of the class members who filed a timely request to be considered for individual relief of the proposed awards of relief to such person, if any. This notice shall also inform each of these individuals of their right to object to the relief, if any, as contained in the report, and that they must file their objection in writing with the Clerk of the Court within fifteen (15) days of their receipt of this notice.

41. The Court shall thereafter, and as soon as practicable, schedule a hearing at which it will rule upon any objections to the report which have been timely filed. At the conclusion of such hearing the Court shall determine whether to give final approval (or approval with modifications) to the awards of individual relief.

D. Implementation of Individual Relief

42. Any person entitled to individual relief under this Decree, in order to obtain such relief, must sign a notarized release which will be provided that person by the Personnel Board in accordance with paragraph 43, infra, and return such notarized release to the Board within thirty (30) days of that person's receipt thereof. Any such individual who either does not sign such a notarized release or, alternatively, and absent good cause, does not return such signed notarized release to the Board within thirty (30) days of that person's receipt thereof, shall be deemed to have waived his or her entitlement to such relief. Such release shall provide that the relief to which that person is entitled under this Decree, if accepted, shall be in full and final settlement of any and all claims against the Board based upon allegations of racial discrimination occurring prior to the date such release is signed. Such release shall be in the form exemplified by Appendix C attached hereto.

43. The Personnel Board shall send a notice to each of the persons entitled to individual relief informing them that the Court has given final approval to their right to such relief under this Decree. This notification shall be in writing, be made by certified mail, return receipt requested, and shall be approved as to substance and form by the plaintiffs prior to mailing. Included with such notice will be a copy of this Decree and the release form as described in paragraph 42 above. Such notification also shall state that if the recipient has any questions about the notice, he or she may contact counsel for the Personnel Board or counsel for the plaintiffs whose names, addresses and phone numbers shall be listed in the notice, or their own counsel.

44. As the Personnel Board receives releases from the class members entitled to a back pay award under this Decree, it shall immediately issue a check drawn from the back pay fund established by this Decree to such person in the amount of his or her back pay award.

IX. NOTICE OF PROVISIONAL APPROVAL OF THE
CONSENT DECREE AND FAIRNESS HEARING

45a. Within ten (10) days after provisional approval of this Consent Decree by the Court, notice will be issued by publication in the Sunday edition of the Birmingham News for two consecutive weeks, and in the Birmingham Times on one weekday directed to all interested persons informing them of the general provisions of this Decree and of their right to review a copy of the Decree which will be on file with the Clerk of the Court. Within the same ten (10) day period, individual notice will also be given of the general provisions of this Decree by the Personnel Board to the subclasses identified in Appendix C. The cost of mailing and publication of any notices to be made under this Decree shall be paid by the Personnel Board. Both the notices by publication and the individual notices shall inform persons to which such notices are directed of their right to be

heard and to file objections, if any, to this Decree. Such objections must be filed with the Clerk of the Court by a date to be set by the Court in its Order granting provisional approval to this Decree. The Court shall thereafter, and on a date(s) to be fixed by the Court in its Order granting provisional approval to the Decree, schedule a fairness hearing at which those persons who file timely objections to the Decree will be heard. At the close of such hearing, or as soon as practicable thereafter, the Court shall rule upon such objections and grant final approval or disapproval to this Consent Decree. The Court shall, however, withhold final approval of the awards of individual relief to be made under this Decree (except the relief to be granted the individual named plaintiffs in the Martin case and the certifications for promotions to be made to the individuals named in Appendix A) until those individuals who file a timely response to the notice of right to present a claim for relief under paragraph 39 above are notified of their individual awards, if any, and are afforded an opportunity to be heard and to file any objections they may have to those awards.

X. RECORDS AND REPORTS

47. Within 60 days of the entry of this Consent Decree and thereafter semi-annually the Personnel Board shall provide counsel for the plaintiffs with the following information:

a. A summary report (or computer tape) showing the total number of permanent, non-probationary employees by race and sex in both the classified and unclassified service in each job classification of each department for each of the jurisdictions currently served by the Personnel Board.

b. A summary report (or computer tape) showing the total number of probationary employees by race and sex in the classified service in each job classification of each department for each of the jurisdictions currently served by the Personnel Board.

c. A summary report (or computer tape) showing the total number of employees by race and sex employed under the Comprehensive Employment and Training Act (CETA) in each job classification of each department for each of the jurisdictions currently served by the Personnel Board.

d. A summary report (or computer tape) showing by race, sex and job title the total number of persons certified to and appointed by each department of each of the jurisdictions currently served by the Personnel Board during the reporting period. The Personnel Board shall also retain for a period of two years for inspection at the written request of counsel for any of the plaintiffs to the Board's legal counsel, copies of the individual certification sheets with the individuals certified and appointed identified by race and sex from which the above summary reports or computer tapes are prepared.

e. A summary report (or computer tape) showing the applicant flow by race and sex for each job classification in the classified service. For purposes of this subparagraph the term applicant shall include any person who files a written application with the Personnel Board. Such summary reports or computer tapes shall separately identify by race and sex the number of persons who file written applications with the Personnel Board. In addition, the Personnel Board shall also retain on file for a period of at least 24 months copies of all post cards filled out by persons who appear at the Personnel Board's main office on which they indicate a desire to be notified of future examinations for classified service positions. The Board shall record the race and sex of the person filling out the card at the time it is received.

f. A summary report of the Personnel Board's recruitment activities during the reporting period which were specifically designed to attract qualified black and women applicants. Included in such report shall be a list of all minority and/or women's organizations or associations and any professional schools, colleges, universities or trade schools where recruitment efforts were made specifically directed towards blacks and/or women, the dates such recruitment efforts were made, and the jobs for which blacks and/or women were being recruited.

48. Within 60 days of the entry of this Consent Decree and thereafter semi-annually, the Personnel Board shall provide counsel for the plaintiffs with the following information for each of the jobs listed in paragraphs 4 and 5 of this Consent Decree and for the jobs of police officer/deputy sheriff, police/sheriff's lieutenant, police/sheriff's captain, firefighter, fire lieutenant, fire captain, labor supervisor and public works supervisor.

(a) The total numbers of persons by race and sex who during the relevant reporting period applied to be tested and/or evaluated for employment.

(b) The total numbers of persons by race and sex who passed and who failed any such tests and/or evaluations for employment.

(c) The identification by name race and sex of each person selected for appointment during the reporting period by each of the jurisdictions currently served by the Personnel Board.

(d) For any test or selection procedure which was administered during the relevant reporting period provided for above in any of the jobs identified by this paragraph, the Personnel Board shall submit a report detailing the manner in which such tests or selection procedures were scored or graded including the impact of such scoring or grading on black applicants, an

analysis of the reliability and standard error of measurement of the test scores, the mean scores or grades of all applicants, white applicants, and blacks applicants, and the standard deviations of the scores or grades of all applicants, white applicants, and black applicants on each such test or selection procedure. If any such test scores or grades on a selection procedure are used for ranking purposes, such report shall include the raw data of the impact on black applicants of the use of such test scores for ranking purposes together with an explanation of the ranking procedures. Attached to such report shall be copies of the eligibility lists identified by race and sex which were compiled as a result of the administration of any of the tests or selection procedures during the relevant reporting period covered by the report.

49. Within 50 days of the entry of this Consent Decree the Personnel Board shall provide counsel for the plaintiffs with the following information with respect to the Board's promotional potential rating system:

(a) the number of persons by race, department, job classification and jurisdiction who received a promotional potential rating during the rating period immediately preceding the entry of this Decree;

(b) the number of persons by race, department, job classification and jurisdiction who scored above and who scored below the minimum score established for promotional eligibility during that rating period.

As new rating cycles are completed, the Personnel Board shall, within 50 days of the completion of such cycle, submit to counsel for the plaintiffs impact data in the form required by subparagraphs (a) and (b) above.

50. If the Personnel Board institutes a new promotional potential rating system in accordance with the provisions of paragraph 11, the reports required to be submitted to counsel for the

plaintiffs under that paragraph shall include the following information:

(a) the number of persons by race, department, and job classification who received a promotional potential rating during the experimental rating period;

(b) the number of persons by race, department and job classification who scored above and who scored below the minimum score established for promotional eligibility;

(c) the name, race, department, job classification and promotional potential score of each person who received a promotional potential rating during the experimental rating period. Also included next to their names shall be an identification of the race of the rater or raters who issued that person's promotional potential rating.

51. If the Personnel Board establishes any training programs in accordance with the provisions of paragraph 15 of this Decree, the Board shall provide counsel for the plaintiffs with the following information for each training class:

(a) The total number of persons by race, sex, department and jurisdiction who applied for such training;

(b) The total number of persons by race, sex, department and jurisdiction who were selected for training;

(c) The total number of persons, if any, by race, sex, department and jurisdiction who were disqualified from or failed to complete the training program;

(d) The total number of persons by race, sex, department and jurisdiction who successfully completed such training.

52. The Personnel Board shall retain on file and available for inspection at the written request of any of the plaintiffs' legal counsel to the Board's legal counsel copies of all tests,

training and experience evaluations, promotional potential ratings, and any other selection instruments together with any documents, forms, reports, statistical compilations and other records which relate to the construction, scoring, use, and validity of such selection procedures.

53. The Personnel Board shall retain for a period of two years on file and available for inspection at the request of any of the plaintiffs' legal counsel copies of all formal written applications for each job in the classified service. If any applicant is determined by the Personnel Board not to be qualified for employment in the job or jobs for which the applicant has applied, the reasons for such disqualification shall be recorded and kept on file with the applicant's application.

XI. EFFECT OF COMPLIANCE

54. Compliance with the terms and conditions of this Consent Decree shall constitute compliance by the Personnel Board with all obligations arising under Title VII of the Civil Rights Act of 1964, as amended, the State and Local Fiscal Assistance Act of 1972, as amended, the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Civil Rights Acts of 1866 and 1871, 42 U.S.C. §1981 and §1983, and the Fourteenth Amendment to the Constitution of the United States as raised by the plaintiffs' complaints. Insofar as any of the provisions of this Consent Decree or any actions taken pursuant to such provisions may be inconsistent with any state or local civil service statute, law or regulation, the provisions of this Consent Decree shall prevail in accordance with the constitutional supremacy of federal substantive and remedial law.

XII. RETENTION OF JURISDICTION

55. The Court retains jurisdiction of this action for such further relief or other orders as may be appropriate. At any time after six (6) years subsequent to the date of the entry of the Consent Decree, any party to this Decree may move the Court upon forty-five (45) days notice to the other, to dissolve this Consent Decree. In considering whether the Consent Decree shall

be dissolved, the Court will take into account whether the primary purposes of this Consent Decree have been substantially achieved.

Entered and ordered this _____ day of _____, 1981.

UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO:

DATED:

For Plaintiff United States:

Richard L. Pitter

May 19, 1981

For the Plaintiffs in Martin, et al.
v. City of Birmingham, et al.:

Susan A. Reeves / Stephen Harty

May 19, 1981

For the Plaintiffs in Ensley Branch of the
N.A.A.C.P., et al. v. Seibels, et al.:

Clayton Adams, III

May 19, 1981

For the Personnel Board:

David P. Whitehead

May 19, 1981

Appendix A

Name	Job
1. Charles Jordan	Construction Equipment Operator*
2. Trennon Nickerson	Construction Equipment Operator*
3. Roosevelt Parker	Construction Equipment Operator*
4. Mose Shine, Jr.	Construction Equipment Operator*
5. Charles Boyd	Labor Supervisor
6. Herman Copes	Labor Supervisor
7. Avance Lomax	Labor Supervisor
8. Samuel Bandy	Public Works Supervisor**
9. A. B. Campbell	Public Works Supervisor**
10. Willie Cargill	Public Works Supervisor**
11. Major Florence	Public Works Supervisor**
12. Willie Gossum	Public Works Supervisor**
13. Clyde Hill	Public Works Supervisor**
14. Arthur Jones	Public Works Supervisor**
15. Cleo Lewis	Public Works Supervisor**
16. Alfred Menifield	Public Works Supervisor**
17. Orman Skinner	Public Works Supervisor**
18. James Parker, Jr.	Refuse Truck Driver
19. Charlie Simmons	Refuse Truck Driver

* Certification for promotion shall be to a future vacancy at the landfill unless the individual expresses to the Personnel Board in writing a desire to be certified for a Construction Equipment Operator position in another location of the Street and Sanitation Department.

** Certification for promotion shall be to a future vacancy in a Public Works Supervisor (or Refuse Collection Supervisor) position in sanitation unless the individual expresses to the Personnel Board in writing a desire to be certified for a Public Works Supervisor position in another area of the Streets and Sanitation Department. If any such individual indicates in writing that he would be interested in a Public Works Supervisor position in either sanitation or street construction and street maintenance, he shall be certified to the first permanent vacancy which arises in either position in accordance with the provisions of paragraph 21 of this Decree.

Appendix B

All black persons who took the 10-C Policeman Test which resulted in the eligibility lists for police officers and deputy sheriffs which were in effect between April 25, 1975 and January 10, 1977 and the 20-B Firefighter Test which resulted in the eligibility lists for firefighters in effect between July 8, 1976 and January 10, 1977, who have not been hired for police officer, deputy sheriff or firefighter positions by a defendant jurisdiction in any of these consolidated actions or who subsequent to the entry of this Court's Order of January 10, 1977, were hired by a defendant jurisdiction but who may have hired earlier but for their rank of such eligibility lists.

RELEASE

Signed this _____ day of _____, 1981.

Social Security Number

NOTARY PUBLIC

APPENDIX D

Notice To [Subclass definition]:

This announcement is to inform you of your right to present a claim for back pay relief under a Consent Decree between the plaintiffs and the Jefferson County Personnel Board in the consolidated actions of: Ensley Branch of the N.A.A.C.P. et al. v. City of Birmingham, et al., C.A. No. 74-Z-12-S; John W. Martin, et al. v. City of Birmingham, C.A. No. 74-Z-17-S; and United States of America v. Jefferson County, et al., C.A. No. 75-P-0666-S.

If you are a member of the subclass described in the caption of this notice you may fill out the attached proof of claim form and mail it to the Clerk of the Court for Northern District of Alabama. Enclosed for your use is an unstamped envelope containing the mailing address of the Clerk of the Court.

If you wish to present a claim for back pay relief under this Consent Decree, your proof of claim form must be received by the Clerk of the Court by no later than o'clock on , 1981. If you do not file this proof of claim form with the Clerk of the Court by that date then, absent good cause shown, you will be deemed to have waived your right to present a claim for back pay relief under this Consent Decree.

After your proof of claim form is filed, you will be contacted by attorneys for the plaintiffs. They will review with you your proof of claim form and the relevant facts which support your claim. Thereafter these attorneys will make a determination of whether your claim merits an award of back pay relief under this Consent Decree.

After final determinations have been made of the back pay awards to be made under this Consent Decree, you will be notified of your individual award, if any. If you do not receive an award of individual relief under the Consent Decree, or if you are not satisfied with the amount of relief provided to you, you will have the right to file an objection to the resolution of your

Proof of Claim Form

Please list your:

Name: _____

Current Address: _____

Current Telephone Number: _____

Please check the appropriate box or boxes if you fall within either or both of the classes described below. If you check either of the boxes then please complete this proof of claim form by supplying the additional information requested below.

☐ I am a black person who took the written test administered by the Personnel Board of Jefferson County for the job of police officer. I wish to present a claim for relief under the Consent Decree with the Personnel Board of Jefferson County.

☐ I am a black person who took the written test administered by the Personnel Board of Jefferson County for the job of firefighter. I wish to present a claim for relief under the Consent Decree with the Personnel Board of Jefferson County.

If you check either of the boxes above, please indicate in the space provided below whether you were contacted for an interview for that job by any of the police or fire departments of any of the following jurisdictions: Birmingham, Jefferson County, Bessemer, Fairfield, Fultondale, Gardendale, Homewood, Hueytown, Midfield, Mountain Brook, Pleasant Grove, Tarrant, Vestavia Hills. If so, please indicate the jurisdiction(s) which contacted you.

If you were contacted for an interview by any of the above jurisdictions please indicate in the space provided below whether

you appeared for that interview, the approximate date(s) of such interview, and whether you were offered employment as a police officer or firefighter with that jurisdiction. —

Finally, please indicate in the space provided below which of the jurisdictions listed above you would have considered accepting an offer of employment with if such an offer would have been made to you. You may list as many jurisdictions as you were interested in.

Please sign and date this proof of claim form and return it to the Clerk of the Court in the enclosed self-addressed envelope.

Signature

Date: _____