

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) and)
)
) VIRGINIA O'HALPIN, GLADYS A. SHARSHON,)
) MARGARET M. CAVANAGH and JEANETTE)
) TURSELLINO,)
)
) Applicants for Intervention) CIVIL ACTION NO.
) as Plaintiffs,) 77-C-1881
)
) v.)
)
) NASSAU COUNTY, et al.,)
)
) Defendants.)

ALICE WOODSON WHITE, et al.,)
)
) Plaintiffs,)
)
) and)
)
) VIRGINIA O'HALPIN, GLADYS A. SHARSHON,)
) MARGARET M. CAVANAGH and JEANETTE)
) TURSELLINO,)
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) Applicants for Intervention) CIVIL ACTION NO.
) as Plaintiffs,) 76-C-1869
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) v.)
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) NASSAU COUNTY POLICE DEPARTMENT, et al.,)
)
) Defendants.)

MEMORANDUM OF PLAINTIFF UNITED STATES
IN OPPOSITION TO THE MOTION OF
VIRGINIA O'HALPIN, et al., FOR REARGUMENT

INTRODUCTION

On June 27, 1983, Virginia O'Halpin, Gladys A. Sharshon, Margaret M. Cavanagh and Jeanette Tursellino (hereinafter "Applicants") filed a motion to intervene in these actions as plaintiffs. Their motion was opposed by both plaintiff United States and the Nassau County defendants. Oral argument on their motion was heard on August 22, 1983, during which Applicants sought and were granted permission to submit additional post-hearing evidence. On September 19, 1983, the Court issued a Memorandum of Decision and Order denying the motion because it was untimely. Applicants now seek to reargue their motion. Plaintiff United States opposes the motion for reargument on the ground that the Applicants have not presented any new arguments to excuse the untimeliness of their motion to intervene. Furthermore, even had Applicants' motion to intervene been timely, Applicants O'Halpin, Sharshon and Tursellino have failed to demonstrate that they met the sex-neutral job qualifications for appointment, which would have entitled them to specific relief. Applicant Cavanagh is not entitled to additional backpay relief because she already is entitled to relief under the United States Consent Decree in exact accordance with similarly situated women.

ARGUMENT

The threshold inquiry in any motion to intervene is whether the motion is timely. NAACP v. New York, 413 U.S. 345, 369 (1973). In its Decision and Order, this Court unequivocally held

that the Applicants' motion was not timely filed. Applicants' motion to intervene came seven years after the White action was filed, six years after the United States action was filed, and approximately a year after consent decrees were entered in each of these actions. This Court held that the motion came "well beyond the time for appeal which, since there was United States involvement, would have been 60 days." Slip Op. at 4.

Applicants cannot justify their tardiness in preserving what they perceive to be their rights in the United States action. Although they assert that they took steps on the administrative level and attempted voluntary conciliation in April and May of 1983 (Memorandum in Support of Motion for Reargument, pp. 3, 4), this reasoning is specious. The United States Consent Decree was entered a year earlier, on April 21, 1982. On its very face, the Decree set out those classifications of individuals who the United States contended had been unlawfully discriminated against on the basis of race, sex or national origin and who the United States contended would have been hired but for that unlawful discrimination. The Consent Decree also set forth the requirements that had to be met by individuals in order to obtain such relief. As demonstrated in the United States' Memorandum in Opposition to the motion for intervention (pp. 5-6, 16), and as Applicants nowhere contest, Applicants O'Halpin, Sharshon and Tursellino would not have been appointed as police patrolmen (or, in the case of Tursellino, as a police cadet) even if they had been men, because they failed to meet the age requirements.

Applicants refer to the June 9, 1983 consent order in the United States action and now suggest that this is the appropriate date from which to measure for the purpose of determining timeliness. As the record reflects, this is merely a consent order which implemented relief provided in the April 21, 1982 Consent Decree in the United States action, and not an independent consent decree. As we previously have demonstrated (Memorandum in Opposition to Motion for Intervention, pp. 6, 15), and as noted by the Court (Slip Op. at 7, n.1), under this consent order Applicant Cavanagh received back pay relief in accordance with Title VII and consistent with the approach taken by the United States with respect to similarly-situated individuals entitled to relief under the United States Decree.

Applicants' motion is untimely and no persuasive new circumstances or arguments have been offered to excuse the delay. This issue has been briefed and argued; Applicants even were allowed to submit post-hearing papers before the Court denied their motion for intervention. Reargument will serve no useful purpose.

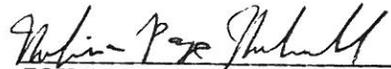
Applicants have moved for a rehearing on the grounds that the Court "overlooked matters" (Memorandum in Support of Motion for Reargument, p. 2). However, having denied the motion to intervene on the grounds of untimeliness, it would have been inappropriate for the Court to then address the merits of the Applicants' claims for relief.

But even if the timeliness question did not exist, the fact remains that only Applicant Cavanagh was entitled to any form of relief under either the White or the United States consent decrees. Applicants do not take issue with the Court's findings that O'Halpin, Sharshon and Tursellino did not meet the age requirements for appointment as police patrolmen or police cadet. Instead, and for the first time, they contend that they were unlawfully denied policewomen jobs. This is actually a demand for sex-conscious preferential treatment. Applicants O'Halpin, Sharshon and Tursellino want to have their cake and eat it, too; they contend that they should have been appointed to police patrolman vacancies filled by lower-scoring men, but without having to have met all of the sex-neutral and lawful qualifications for such appointment which all of the men had to have met. Title VII requires equal treatment in employment, not sex-conscious preferential treatment.

CONCLUSION

For the foregoing reasons, the motion of Applicants O'Halpin Sharshon, Tursellino and Cavanagh for reargument should be denied.

Respectfully submitted,



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MELISSA P. MARSHALL

Attorneys

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Civil Rights Division

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Counsel for Plaintiff United
States of America

CERTIFICATE OF SERVICE

I, MELISSA PAGE MARSHALL, hereby certify that on October 21, 1983, I served a copy of the foregoing Memorandum of Plaintiff United States in Opposition to the Motion of Virginia O'Halpin et al., for Reargument, by Express Mail upon the following counsel of record:

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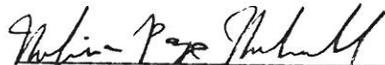
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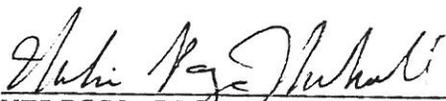
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