

INDEX NO. 77 C. 1881 (FXA)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiffs,

and

NASSAU COUNTY GUARDIANS
ASSOCIATION, INC., et al.,

Applicants for
Intervention as
Plaintiffs,

v.

NASSAU COUNTY, et al.,

Defendants.

NOTICE OF MOTION WITH SUP-
PORTING DECLARATIONS

CRAVATH, SWAINE & MOORE
Attorneys for Intervenor-Plaintiffs

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NEW YORK, N. Y. 10005

Tel. No. HAnover 2-3000

Uniondale, New York, for an order pursuant to Fed. R. Civ. P. 24 (a) and (b) permitting the proposed intervenor-plaintiffs to intervene in this case and to file and serve the annexed Complaint in Intervention, and in the event intervenor-plaintiffs' motion to intervene is granted, for an order pursuant to Fed. R. Civ. P. 23 declaring that the Complaint in Intervention be certified as a class action against defendants, and designating intervenor-plaintiffs as representatives of their respective classes, and for such other and further relief as may be just and proper.

May 31, 1985.

Respectfully submitted,

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and

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By: _____

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Declaration of Winston Tyrone Green

attended Nassau Community College on a part-time basis thereafter, completing at least a semester of additional work in Business Administration, Health and Science. I am presently employed as an Orderly with St. Francis Hospital.

2. On December 10, 1983, I took the hiring examination for a position as a Police Officer with Nassau County. I received a score of 78.8, which was a passing score. I took the medical, physical, and psychological tests, and passed them all. I have not been hired and have not heard anything further from Nassau County about my application after taking these tests. I do not know of anything which would disqualify me.

3. If Nassau County had used a fair test which did not discriminate against minorities, including blacks and Hispanics, or which did not have such a strong degree of adverse impact against minorities, including blacks and Hispanics, I believe that I would have received a higher rank on the test, and would have had a better chance of being hired.


WINSTON TYRONE GREEN


May 31, 1985

Declaration of Lawrence A. Haddart

Science and Criminal Justice. I worked as a Corrections Officer for the New York State Department of Corrections from September 25, 1980 to February 16, 1981. I am currently a Trooper with the New York State Police, and have been so employed since February 16, 1981.

2. On December 10, 1983, I applied to become a police officer with the Nassau County Police Department. I took the hiring examination, and received a score of 83.62. I have not been asked to take a medical examination, have not been asked to take a physical ability test, and have not had any oral interview. I have heard nothing further about my application since receiving the score. I know of nothing that would disqualify me, and I believe that my education, and my experience as a correctional officer and as a member of the State Police, would be a valuable asset to the Nassau County Police Department.

3. I believe that the hiring examination used by Nassau County may make it difficult or impossible for me to be hired, because of the degree of its adverse impact against minorities, including blacks and Hispanics.


LAWRENCE A. HADDART

May 31, 1985

Declaration of Lorenzo Rochester

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
and)
)
NASSAU COUNTY GUARDIANS ASSOCIATION,)
INC., et al.,)
) C.A. No. 77-C-1881
Applicants for Intervention)
as Plaintiffs,)
)
v.)
)
NASSAU COUNTY, et al.,)
)
Defendants.)

DECLARATION OF LORENZO ROCHESTER

COUNTY OF NASSAU)
) ss:
STATE OF NEW YORK)

I make the following declaration subject to the penalties for perjury:

1. My name is Lorenzo Rochester. I am the President of the Nassau County Guardians Association, Inc., 143 Wallace Street, Freeport, New York 11520. I have been a Nassau County Police Officer since April 1969. I am a black man.

2. The Nassau County Guardians was formed in the 1960's, and was incorporated under the laws of New York on June 11, 1970. Its membership is open to all officers of Afro-American heritage in the Nassau County Police Department, the police departments of the villages in Nassau County, and the officers of the New York State Police in this region. One of the main activities of the Nassau County Guardians is the recruitment of black applicants to join the Department. In one

year, the Nassau County Police Department granted permission for the Guardians to appear on a call-in show held by a local radio station with a predominantly-black audience, for the purpose of persuading more blacks to apply for positions with the Department. In other years, our members have been active in recruiting black applicants for the Department, and have often participated as individual officers in the Department's own recruiting efforts.

3. The Guardians' involvement in recruiting black applicants for the Department is recognized in paragraph 13(d) of the 1982 Consent Decree in this case, which provides that the County's recruitment program for qualified black, Hispanic, and female applicants include:

d. Contacts with and visits to local offices of groups and associations which specifically serve (or promote the employment opportunities of) blacks, Hispanics or females (e.g., the NAACP, the Urban League, the National Organization for Women and the Nassau County Guardians), to inform them of the County's active and continuing recruitment program on behalf of blacks, Hispanics and females for the rank of Police Officer in the NCPD); ...

* * *

4. The recruitment efforts of the Guardians and of our members will be made meaningless if the Department is allowed to use a test like the test given in December 1983, which has substantial adverse impact against members of minority groups, because the applicants we recruit will not be hired. The Department is planning on hiring 105 applicants as of May 31, 1985, and there will be only one black applicant, and no Hispanic

applicants in this group, even though a third of the applicants taking the December 1983 hiring examination were black or Hispanic.

5. As long as there are relatively few black officers in the Nassau County Police Department, it is easier for black officers to be given less favorable treatment than white officers and it is easier for black officers to be discriminated against in their assignments. Despite the Consent Decree, such discrimination still exists. For example, there are no black officers permanently assigned to the Arson Squad, the Burglary Squad, the Homicide Squad, the Robbery Squad, the Major Case Squad, or the Forgery Squad. For these reasons, I and the other black officers in the Nassau County Police Department have a personal stake in the ending of discrimination against black applicants in hiring, and in the hiring of more black applicants.


LORENZO ROCHESTER

May 25, 1985

Declaration of Richard T. Seymour

interests of blacks, Hispanics, and women in the enforcement of their rights to be free from discrimination. The Committee was founded by the leaders of the American bar in 1963, at the request of the President of the United States, to provide free representation to the victims of discrimination. With the assistance of its local offices in Washington, D.C., Philadelphia, Boston, Chicago, Jackson, Denver, Los Angeles, and San Francisco, and with the active help of the private bar, the Lawyers' Committee has since its founding provided representation in hundreds of civil rights cases involving employment discrimination, school desegregation, voting rights, municipal services, school finance, and other areas. I make this declaration based on personal knowledge, information, and belief. My information and belief are based upon the discovery responses filed last week by the United States, published accounts of information provided by Nassau County officials to the press, conversations with members of the Nassau County Guardians and with unhired applicants, and on conversations with representatives of the United States, and with Committee personnel.

2. I submit this declaration in support of intervenors' motion for leave to intervene and in support of intervenors' motion for class certification.

3. Intervenors seek to represent two classes--minority applicants who took the invalid Nassau County

Police Officer Selection Test ("NCPOST") and black officers currently on the Nassau County Police Department ("NCPD").

4. On or about the beginning of April 1985, the Lawyers' Committee became aware that there was doubt whether the Justice Department would proceed with a challenge to the validity of the NCPOST. Virtually immediately, on April 1, 1985, William L. Robinson, the Director of the Lawyers' Committee, telephoned David Rose, the Chief of the Federal Enforcement Section of the Civil Rights Division, and requested a copy of the public papers in the case, including discovery materials but excluding any confidential materials or materials subject to a nondisclosure order, if any. On April 9, 1985, Mr. Rose informed me that the Justice Department would insist on the filing of a written Freedom of Information Act request before it would release any such public papers. Mr. Robinson signed the formal FOIA request that day, and it was hand-carried to the Justice Department and delivered there in the afternoon of the same day. On May 22, 1985, the Civil Rights Division's Acting FOIA Officer, Nelson Hermilla, informed me by telephone that our request had been granted. The following day, I received the Justice Department's responses to Nassau County's discovery concerning the NCPOST. We have not received any other documents in response to the request, and I was informed by telephone on May 29, 1985, that the Justice Department

has still not decided which documents to release to us, and that it was trying to obtain the consent of the defendants and of the Educational Testing Service as to the materials to be released.

5. On May 1, 1985, the Nassau Guardians, John Davis, and I met with William Bradford Reynolds, the Assistant Attorney General in charge of the Civil Rights Division, David Rose, John Gadzichowski (the trial attorney prosecuting this action on behalf of the United States), and other officials of the Justice Department.

6. There were two issues of critical concern raised at this meeting. First, Mr. Rochester and other Guardians explained the importance of the United States' fulfilling its obligations under the Consent Decree and challenging the validity of the NCPOST. Second, we discussed the importance of adequate relief in the event the test were held invalid. We pointed out that the April 1985 agreement of the United States to let Nassau County hire 105 officers in May of ¹⁹⁸⁵ June, based on the rank-ordered lists compiled from the NCPOST, would, based on our information, result in the hiring of 104 whites and 1 black, with Hispanics being completely excluded. We pointed out that the April 1985 agreement made no provision at all for protecting the rights of the blacks and Hispanics excluded by this examination. We pointed out that the Consent Decree

had allowed Nassau County to make use of a prior unlawful test, on the express condition that hiring would be without adverse impact, i.e., that blacks and Hispanics would constitute the same percentage of hires that they constituted of the applicants. I asked Mr. Reynolds whether he would give us a commitment to seek and obtain the same relief as to the NCPOST, or whether in his view the Justice Department's broad reading of the decision in Memphis Firefighters v. Stotts, 81 L.Ed.2d 483, 104 S.Ct. 2576 (1984) would bar it from seeking such relief. I pointed out that the additional hires to be made in September 1985 would be sufficient in number so that, when all the 1985 hires were considered together, there were enough places left to remove the adverse impact of the NCPOST as to both blacks and Hispanics.

7. Mr. Reynolds stated that the United States had not yet decided whether to challenge the validity of the examination, and that my questions on relief were premature.

8. On May 23, 1985, Mr. Rose informed me by telephone that the Justice Department had decided to proceed with its challenge to the validity of the NCPOST. Immediately thereafter, I prepared a letter to Mr. Gadzichowski, formally asking the Department of Justice to commit itself to seeking and obtaining the type of relief described above, or an equivalent type of relief which would equally well

protect intervenors' interests. In the absence of such a commitment, the letter stated, our clients would have to intervene to protect their interests; with such a commitment, intervention would become unnecessary. The letter was hand-delivered that day. On May 28, Mr. Gadzichowski informed Mr. Robinson by telephone that the Justice Department was not prepared at this time to make any commitment as to the relief it would seek, and by telephone today Mr. Gadzichowski informed me that he could not give me a date by which the Justice Department would make a decision on relief.

9. In case after case across the country, the Justice Department has been taking the position that race-conscious relief should not be awarded to any person who is not a proven victim of discrimination. In the event that the Court finds the NCPOST not to be valid, the task of proving which individual blacks and Hispanics, out of the several thousands of black and Hispanic applicants, would have been hired in the absence of this test would be impossible. It is therefore quite possible that the Justice Department's rigid general position on relief might result in no relief being provided to intervenors or their classes, and in Nassau County's being allowed to keep the virtually all-white group of hires scheduled to be made on May 31, without ever having to hire any blacks or Hispanics to

eliminate the adverse impact of these discriminatory hires.
Intervention is necessary to prevent such a result.

May 30, 1985


Richard T. Seymour