

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ARTHUR L. LEWIS, JR., et al.,)	
)	
Plaintiffs,)	No. 98 C 5596
)	
v.)	Judge Joan B. Gottschall
)	
CITY OF CHICAGO,)	
)	
Defendant.)	

ORDER

Now before the court is Plaintiffs’ motion to reinstate three firefighters hired by the City of Chicago (“the City”) pursuant to the court-ordered relief in this case. Plaintiffs move for reinstatement pursuant to the court’s inherent powers and Federal Rule Civil of Procedure 65, which governs injunctions. The City opposes the motion. For the reasons stated below, the court denies the motion.

As part of the remedy ordered by the court in this case, the City hired 111 firefighter candidates. The 111 candidates then began the Fire Academy and a nine-month period of probationary employment. Of the 111 candidates, 105 have graduated from the Academy and become members of the Chicago Fire Department (“CFD”). At issue in this motion are three candidates (“the three”) who were terminated on December 14, 2012. The City terminated the three after they failed to pass a certification examination for paramedics (the “NREMT”) during their nine-month probationary period. Each of the three failed the NREMT four times, before finally passing in January 2013 (their fifth attempt, after the probationary period ended). Plaintiffs have moved that the three be reinstated since they have now passed the exam.

If a court finds that an employer engaged in an unlawful employment practice in violation of the Civil Rights Act of 1964 (“Title VII”), “the court may . . . order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees.” 42 U.S.C. § 2000e-5(g)(1). In crafting Title VII, Congress “intended to give the courts wide discretion exercising their equitable powers to fashion the most complete relief possible.” *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 763 (1976). In order to make victims whole, Title VII “requires that persons aggrieved by the consequences and effects of the unlawful employment practice be, so far as possible, restored to a position where they would have been were it not for the unlawful discrimination.” *Id.* However, Title VII also provides, “No order of the court shall require . . . hiring, reinstatement, or promotion . . . if such individual was refused admission, suspended, or expelled, or was refused employment or advancement . . . for any reason other than discrimination[.]” 42 U.S.C. § 2000e-5(g)(1).

Plaintiffs ask the court to order reinstatement, arguing that the balance of the equities weighs in favor of reinstatement. But for the City’s discrimination, they contend, the three would have entered the Fire Academy a decade ago, when they were not removed by so many years from their period of formal classroom education. Plaintiffs argue the three would at that point have had an easier time preparing for and passing the NREMT.

The City contends that as an employer, the CFD is entitled to set the qualifications for the position of Firefighter-EMT, and the CFD’s requirements are grounded in legitimate job-related, public-safety concerns. The City argues that completing the EMT licensure requirements within the probationary period is directly linked to skills needed for a public safety position. CFD Deputy Commissioner Anthony P. Vasquez attests: “In my professional opinion . . . a

Firefighter-EMT candidate's ability to pass the NREMT exam within the probationary period reflects a basic mastery of emergency medical services and is directly related to the candidate's ability when deployed into the field." (City of Chicago's Resp., Ex. F (Vasquez Dep. at ¶ 7), ECF 654-6.) A court generally does not second-guess an employer's judgment in establishing the essential requirements of a job. *See Basith v. Cook Cnty.*, 241 F.3d 919, 928 (7th Cir. 2001).

The City points out that the CFD's labor agreement with the Chicago Fire Fighters Union, Local No. 2 (the "Labor Agreement") and CFD's internal policies require the termination of any Firefighter-EMT candidate who fails to become licensed as an EMT during the nine-month probationary period of employment. Specifically, the Labor Agreement, § 16.11(C)(1) provides:

The City shall provide EMT-B training which shall be mandatory for new hires, who shall be required to be licensed by the State of Illinois as an EMT-B prior to the end of their nine (9) months as a probationary employee.¹

The Firefighter Candidate's Manual of Rules, Regulations, Practices and Procedures ("the Manual") further states, "The Candidate Firefighter EMT-B must successfully pass the EMT-B Licensure Test prior to graduating from the Academy," and "failure . . . to comply with [this requirement] may result in termination." (D.'s Resp. Ex. D (Manual at §2.7).)

In its 2007 opinion, the court anticipated "the likelihood that individuals hired pursuant to this decree may be older, and have different life experiences and different training challenges, than the usual Academy student." (Mem. Op. & Order entered Mar. 20, 2007, ECF No. 391 at 8.) Nonetheless, in its injunction, the court did not order any alterations to the Academy training

¹ EMT-B means "Emergency Medical Technician - Basic." *See* 77 Ill. Admin. Code § 515.100.

for the class members. The court's injunction required the hiring of 111 class members but contained no guarantee that all would graduate from the Academy. The court declines to speculate that the three would have passed the NREMT within their probationary period had they entered the Academy a decade ago.

The CFD provided resources to class members far in excess of its ordinary Academy training, including additional instructors, tutors, and review sessions. The CFD hired the members of the *Lewis* class who failed the NREMT three times, but passed on the fourth try (prior to the expiration of their probationary period). The City provided the affidavit of CFD's District Chief, Division of Training, Peter Van Dorpe, who attests that hiring individuals who had failed three times but passed on the fourth time was unprecedented since at least 2006.

While the court's equitable powers are not limited by the relief it already ordered, it declines to order reinstatement on the record before it. Though Title VII's purpose of making plaintiffs whole defines the court's remedial powers, its language also prohibits the court from reinstating individuals who were terminated for reasons other than discrimination. The court therefore denies the Plaintiffs' motion to reinstate.

ENTER:

/s/

JOAN B. GOTTSCHALL

United States District Judge

DATED: March 25, 2013