

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

ARTHUR L. LEWIS, JR., et al.,

Plaintiffs,

v.

CITY OF CHICAGO,

Defendant.

Case No. 98 C 5596

Judge Joan B. Gottschall

**PLAINTIFFS' MOTION
TO ENFORCE AND FOR A RULE TO SHOW CAUSE**

Plaintiffs, by counsel, move to enforce the seniority provisions of the injunctive order of relief entered by the Court in this case. Plaintiffs also request an order directing the City of Chicago to show cause why it should not be held in contempt for violating those provisions. In support of this motion, Plaintiffs state as follows:

1. A copy of the Injunction Injunctive Order of Relief entered by the Court in this case is appended as Exhibit A to this motion. Section B1 of the Injunction governs seniority rights for class members who have been awarded jobs in the Fire Department (“class-member hires”).

2. Section B1 provides, in clear terms, that class-member hires “shall” have seniority dating back to June 1, 1999 “for *all* purposes for which seniority is considered,” subject to two, and *only* two, narrow exceptions. The two exceptions are

specifically identified in Section B. They relate to: **(a)** promotions under sections 9.3(B)(1) and (2) of the collective bargaining agreement and **(b)** statutory occupational disease disability benefits pursuant to the Illinois Pension Code, for which purposes class member hires' seniority dates to their entry into the Fire Academy. For *all* other purposes for which seniority is considered, class-member hires are to be treated as if hired on June 1, 1999. The text of Section B1 of the Injunction thus states:

B. Retroactive Seniority

1. Constructive Seniority Date. Any class-member hired pursuant to the terms of this Order shall be entitled, after completion of the contractual nine-month probationary period of employment, ***to retroactive seniority credit dating back to June 1, 1999 for all purposes for which seniority is considered*** except

(a) sections 9.3(B)(1) and (2) of the Collective Bargaining Agreement and

(b) the seven or more years of service required of a fireman to be eligible for an occupational disease disability benefit pursuant to 40 ILCS 5/6-151.1 of the Illinois Pension Code ("Code").

For purposes of section 9.3(B)(1) and (2) and the seven-year service requirement in 40 ILCS 5/6-151.1, a class member's seniority date shall be the actual date each such class member enters the Chicago Fire Department Training Academy to begin firefighter training.

(Emphasis added).

3. One of the purposes for which seniority is considered by the Fire Department is dress uniforms: as a reward for seniority, the CFD awards members "service bars" and "stars" to affix to their dress uniforms, one bar for every five

years of seniority and one star for every 20 years. *See* Exhibit B hereto (CFD General Order No. 08-001 at 8) (“Display of Service Bars”).

4. In violation of Section B1 of the Injunction, the Fire Department has refused to award service bars to class-member hires. *See* Exhibit C hereto (correspondence between counsel). The Department’s withholding of service bars from class-member hires violates the Injunction, stigmatizes the class-member hires, and denies them the make-whole relief that Title VII and the Injunction are supposed to effectuate.

5. Section B1 of the injunction requires that “for all purposes” (except promotions and occupational disability benefits) the length of service for each class-member hire “shall” be measured from June 1, 1999. There is no exception for service bars for dress uniforms. Indeed, the presence of *express* exceptions for promotions and occupational disability benefits in Section B1 re-enforces that no other exceptions are either intended or permitted. Under basic canons of construction, the specific inclusion of those two exceptions precludes any others. *See generally Tennessee Valley Authority v. Hill*, 437 U.S. 153, 188 (1978) (under the maxim *expressio unius est exclusio alterius*, the inclusion of specific, express exceptions presumptively excludes implying additional exceptions not mentioned).

6. The language of Section B1 of the Injunction is dispositive.

7. The Fire Department has advised plaintiffs’ counsel that service bars have been denied to class member hires based on a claimed distinction between

“seniority” and “periods of service.” See Exhibit C. The Injunction allows no such distinction. Further, it is a distinction without a difference and a semantic evasion: both in the collective bargaining agreement relevant here (between the Fire Department and the Union) and as a matter of law, “seniority” corresponds to length of service. The *definition* of seniority is period of service. See Exhibit D hereto (CBA § 9.1) (defining “seniority” as “an employee’s *length of continuous service* since his last date of hire). *Accord California Brewers Ass’n v. Bryant*, 444 U.S. 598, 606 (1980) (“Webster’s Third New International Dictionary 2066 (unabridged ed. 1961) defines ‘seniority,’ in pertinent part, as the ‘status attained by *length of continuous service* . . . to which are attached by custom or prior collective agreement various rights or privileges . . . on the basis of ranking relative to others”) (emphasis added).

8. Under Section B1 of the Injunction, class member hires must be accorded rights and privileges commensurate with service dating back to June 1, 1999—which is when they would, on average, have been hired but for the City’s violations of Title VII—“for all purposes” except certain promotions and disease disability benefits. Therefore, all class-member hires, having ten-plus years of seniority, are entitled, like other members of the Department with ten-plus years of seniority, to two service bars for their dress uniforms.

WHEREFORE, plaintiffs request that the Court enter an order enforcing the seniority provisions of the Injunction and ordering the City of Chicago to show cause why it should not be held in contempt for violating those provisions.

Dated: August 12, 2013

Respectfully submitted,

s/ Joshua Karsh
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