

Minute Order Form (rev. 12/90)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	HOLDERMAN	Sitting Judge if Other Than Assigned Judge	
Case Number	88 CV 3773	Date	September 7, 2001
Case Title	Chicago Firefighters/ Lt. Exam vs. City of Chicago		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "MOTION" box above]
(2)	<input type="checkbox"/>	Brief in support of motion due _____
(3)	<input type="checkbox"/>	Answer brief to motion due _____ Reply to answer brief due _____
(4)	<input type="checkbox"/>	<input type="checkbox"/> Ruling on _____ set for _____ at _____ <input type="checkbox"/> Hearing
(5)	<input type="checkbox"/>	Status hearing <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____
(6)	<input type="checkbox"/>	Pretrial conf. <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____
(7)	<input type="checkbox"/>	Trial <input type="checkbox"/> Set for <input type="checkbox"/> re-set for _____ at _____
(8)	<input type="checkbox"/>	<input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Hearing held and continued to _____ at _____
(9)	<input type="checkbox"/>	This case is dismissed <input type="checkbox"/> without <input type="checkbox"/> with prejudice and without costs <input type="checkbox"/> by agreement <input type="checkbox"/> pursuant to <input type="checkbox"/> FRCP 4(j) (failure to serve) <input type="checkbox"/> General Rule 21 (want of prosecution) <input type="checkbox"/> FRCP 41(a)(1) <input type="checkbox"/> FRCP 41(a)(2)
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Defendant City's Motion for Summary Judgment on Plaintiffs-Intervenors Group B is Denied and on Plaintiffs-Intervenors Group C is Granted. All other pending motions are moot. The parties are, once again, urged to discuss settlement. The case is set for report on the status thereof at 9:00 a.m., September 20, 2001.
(11)	<input checked="" type="checkbox"/>	[For further detail see <input checked="" type="checkbox"/> order on the reverse of <input type="checkbox"/> order attached to the original minute order form.]

<input type="checkbox"/>	No notices required, advised in open court.	ED-7 FILED FOR DOCKETING 01 SEP 10 AM 8:05 SEP 10 2001 <i>[Signature]</i> 9-7-01	number of notices	Document # 454
<input type="checkbox"/>	No notices required.		date docketed	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		docketing dpty. initials	
<input type="checkbox"/>	Notified counsel by telephone.		date mailed notice	
<input type="checkbox"/>	Docketing to mail notices.		mailing dpty. initials	
<input type="checkbox"/>	Mail AO 450 form.			
<input type="checkbox"/>	Copy to judge/magistrate Judge.			
<input checked="" type="checkbox"/>	courtroom deputy's initials	Date/time received in central Clerk's Office		

## 88 CV 3773

On October 4, 2000, a jury returned a verdict in this case finding that the City committed unlawful discrimination against a class of white Chicago Fire Department personnel ("the Class") who completed the 1986 Lieutenant promotional exam ("the Exam") when in 1988 the City standardized the Exam's scores based on race and national origin, thereby creating an unlawfully discriminatory promotion eligibility list ("the List"). For the purpose of determining the standing of various members of the Class to recover damages, if proven, the Class was divided by agreement of counsel for all parties into three groups. Group A, which is not the subject of this motion, consists of members of the Class who would have been promoted or would have been promoted sooner had the City not discriminatorily created the List by standardizing the scores using unlawfully discriminatory criteria as it did.

Counsel by agreement defined Groups B and C of the Class in their February 13, 2001 joint filing as follows:

"2. Group B consists of those persons whose unstandardized scores were not high enough to place them in Group A. They contend that they would have been promoted had the 1986 Lieutenant eligibility list not been retired in January of 1992.

3. Group C consists of those persons whose scores would not have resulted in a promotion from the 1986 Lieutenant examination." (Dkt #270)

It is undisputed that the List was retired by the City in 1992 after 208 promotions had been made. The 1992 retirement of the List eliminated any chance any of the Class members who had not been promoted from being promoted based on the scores achieved on the Exam. The reason for the City's retirement of the List is a material fact as to Group B that is disputed. The plaintiff-intervenors contend, with some support in the record, that the City had intended to make more than 208 promotions from the List, but retired the List after realizing the procedure used by the City to create the List was unlawfully discriminatory. The City has a different view of its motive for retiring the List. Based on this dispute of material fact, among others, summary judgment cannot be granted in favor of the City against Group B of the Class who clearly have standing to assert and prove at trial, if they can, any of their claims for damages, including back pay and emotional distress proximately caused by the City's discrimination regarding the creation and removal of the List.

As to the Chicago Fire Department personnel in Group C of the Class, summary judgment must be granted in the City's favor. Because the Group C members of the Class have not alleged and cannot allege "an ongoing or imminent violation to support a claim of forward looking relief," Texas v. Lesage, 528 U.S. 18, 22 (1999), the undisputed material fact that the Group C members' "scores would not have resulted in a promotion from the 1986 Lieutenant examination" (Dkt # 270) establishes that the City would have made the same decision not to promote the Group C members of the Class regardless of its unlawful discrimination based on impermissible criteria. This dooms the Group C members' claims. The court bases this determination not only on the United States Supreme Court's ruling in Lesage, but also on Northeastern Florida Chapter of Associated General Contractors v. City of Jacksonville, 508 U.S. 656, 663-64 (1993); the subsequent case authority of the Seventh Circuit see, e.g., McNamara v. City of Chicago, 138 F. 3d 1219, 1222 (7<sup>th</sup> Cir. 1998); Tarpley v. Jeffers, 96 F. 3d 921 (7<sup>th</sup> Cir. 1996); and other United States Courts of Appeals see, e.g., Price v. City of Charlotte, 93 F. 3d 1241, 1248 (4<sup>th</sup> Cir. 1996); as well as holdings of my colleagues on this district court, see, e.g., Petit v. City of Chicago, 31 F. Supp. 2d 604, 612 (N.D. Ill. 1998) (Hart, J.); Massie v. Illinois Department of Transportation, 1998 U.S. Dist. LEXIS 8680 \*13 (N.D. Ill.) (Norgle, J.); Kaski v. Gainer, 1993 U.S. Dist. LEXIS 16503 \*4-5 (N.D. Ill.) (Leinenweber, J.).

Defendants other arguments are not sufficient to allow the granting of summary judgment in the City's favor as to Group B. Because this case is a class action, the tolling principles which accompany class claims apply. All other pending motions are moot.

The parties are urged, once again, to discuss settlement.