

United States v. City of Warren

United States District Court for the Eastern District of Michigan, Southern Division

November 6, 1996, Decided

CASE NO.: 86-CV-75435-DT

Reporter: 1996 U.S. Dist. LEXIS 18361

UNITED STATES OF AMERICA, Plaintiff, vs. CITY OF WARREN, MICHIGAN; CITY OF WARREN POLICE AND FIREFIGHTER CIVIL SERVICE COMMISSION, Rule 19(a) Party, Defendants.

Disposition: [*1] Relief sought by the government on behalf of claimant Joseph Fears granted and plaintiff relief on behalf of claimant Fears in the amount of \$ 55,593.00 awarded. Plaintiff's claims for relief on behalf of all other claimants denied.

Counsel: For UNITED STATES OF AMERICA, plaintiff: Richard S. Ugelow, Dawn P. Marcelle, U.S. Department of Justice, Civil Rights Division, Washington, DC. Leslie T. Annexstein, U.S. Department of Justice, Civil Rights Division, Washington, DC.

RODERIC MOSELEY, appellant, Pro se, Detroit, MI.

For CITY OF WARREN, defendant: Walter B. Connolly, Jr., Miller, Canfield, Detroit, MI. For ALBION, CITY OF, defendant: Mark A. Randon.

For WILLIAM E. MITCHELL, claimant: James J. Parks, Gabrian & Parks, Bloomfield Hills, MI.

For ECORSE, CITY OF, movant: Sanford A. Schulman, Detroit, MI. Victor T. Mitea, Taylor, MI. For WILLIAM E. MITCHELL, movant: James J. Parks, Gabrian & Parks, Bloomfield Hills, MI. For EDNA HUCKABY, movant: Willard W. Wallace, Detroit, MI. Edna Huckaby, movant, Pro se, Detroit, MI. For DONALD R. THARRETT, movant: Richard A. Meier, Miller & Shensky, Bloomfield Hills, MI. For MIKE GRUBER, movant: Richard A. Meier, (See above). For LEO [*2] FRANCIS, movant: Richard A. Meier, (See above). For MICHAEL KENSICKI, movant: Richard A. Meier, (See above). For TERRY LAMINAN, movant: Richard A. Meier, (See above). For TIMOTHY SITTARO, movant: Richard A. Meier, (See above).

For WARREN POLICE AND FIREFIGHTERS CIVIL SERVICE COMMISSION, CITY OF, defendant: James M. Hacker, Mount Clemens, MI.

Judges: PATRICK J. DUGGAN, UNITED STATES DISTRICT COURT JUDGE

Opinion by: PATRICK J. DUGGAN

Opinion

OPINION

I. Introduction

The present action was filed by the United States on October 31, 1986, alleging a pattern or practice of unlawful discrimination against blacks in employment by the City of Warren ("City" or "Warren") in violation of Title VII of the Civil Rights Act of 1964 as amended, *42 U.S.C. § 2000e, et seq.* See *42 U.S.C. § 2000e-6*. This Court made a determination that Warren did, in fact, unlawfully discriminate against blacks in employment practices, in particular that its preapplication durational residency requirement had an adverse impact on blacks with respect to their employment opportunities, and its recruitment practices for police and firefighter positions unlawfully discriminated against black applicants, both in violation [*3] of Title VII.

On January 15, 1993, the Court ordered that the United States could seek relief on behalf of individuals who may have suffered as a result of Warren's discriminatory practices. Pursuant to such order, the United States attempted to locate and notify individuals who might be entitled to relief. Three-hundred and sixteen claims were received and reviewed by the government and Warren.

On July 25, 1995, the government filed a motion for adoption of its recommendations on claims for individual relief, on behalf of eleven individuals ¹ pursuant to paragraph 4 of this Court's Tenth Supplemental Stage II Order. In that motion, the government sought relief for the following individuals: Joseph Fears, Brady Foreman, Deborah Garnett, Leonard Hill, William Holland, Vanessa Jones, Arthur Mainor, Michael Moore, Carolyn Pace, Landy Smith, III, and Edward Walters. On August 10, 1995, Warren filed a motion for summary judgment based on its contention that as a matter of law none of the eleven identified claimants were entitled to individual relief. On March 29, 1996, this Court issued five separate opinions and ten orders in comport with those opinions denying the

¹ The United States initially recommended relief for 75 individuals; however, for various reasons, it's ultimate recommendation sought relief for eleven individuals. See Pl.'s Br. in Resp. to Def.'s Mot. for Summ.J.

United States' motion [*4] for adoption of its recommendations and granting in part, and denying in part, Warren's motion for summary judgment. ²

On June 18-20, and 24, 1996, this Court heard testimony from each of the eight remaining claimants and from Warren's two witnesses, Paul Pash, and Michael Smith. The Court also reviewed the deposition testimony of Warren's witnesses Philip G. Tannian and Kenneth Myers. In reaching its decision as to each claimant, the Court did not find the testimony of Tannian or Myers to be of any significance. ³ On July 24, 1996, both parties filed post-trial briefs. ⁴ [*5]

II. Discussion

A. Entitlement to Individual Relief in General

In *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977), the Court discussed the government's burden at the "remedial" stage of trial, where the government seeks individual relief on behalf of victims of discrimination.

The Government need [*6] only show that an alleged individual discriminatee unsuccessfully applied for a job and therefore was a potential victim of the proved discrimination. . . . the burden then rests on the employer to demonstrate that the individual applicant was denied an employment opportunity for lawful reasons. *Id.* at 362, 97 S. Ct. at 1868. As to those individuals who did not apply, the government must show that but for the discriminatory conduct, *i.e.*, the preapplication residency requirement or the "deficient" recruitment practices, the individual would have applied for an available job. ⁵

After the actual victims of the employer's [*7] discriminatory practices are identified, "the court must, as nearly as possible, recreate the conditions and relationships that would have been had there been no unlawful discrimination. This process of recreating the past will necessarily involve a degree of approximation and imprecision." *Id.* at 372, 97 S. Ct. at 1873 (internal citation and quotations omitted).

In *Suggs v. Service Master Educ. Food Mgmt.*, 72 F.3d 1228 (6th Cir. 1996), the Sixth Circuit stated that "awards under Title VII must be reasonable: An employee who was [discriminated against] must be made whole, but is not entitled to a windfall." *Id.* at 1234. The Sixth Circuit also stated that:

the goal of Title VII is to "make persons whole for injuries suffered on account of unlawful employment discrimination." *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 95 S. Ct. 2362, 45 L. Ed. 2d 280 (1975). . . . An award of back pay is presumptively favored in employment discrimination cases. *Albemarle*, 422 U.S. at 405, 95 S. Ct. at 2362 . . . Pursuant to the "make whole" purposes of such relief, the general rule is to award back pay through the date of judgment. *Suggs*, 72 F.3d at 1233 (internal [*8] citations omitted). See *Wooldridge v. Marlene Indus. Corp.*, 875 F.2d 540 (6th Cir. 1989), wherein the Court stated:

. . . "Backpay should be awarded even where the precise amount of the award cannot be determined," with any ambiguities being resolved against the discriminating employer.

² Warren's motion for summary judgment was granted in full as to claimants Hill, Mainor and Moore.

³ The Court is aware of the fact that the United States has moved to exclude the testimony of Tannian and Myers. Because the Court did not find it necessary to rely on the testimony of either witness in reaching its decision, the Court denies the motions to exclude the testimony of these witnesses as moot.

⁴ The City of Warren objects to the United States' submission of Attachments B through G with its post-trial brief because said items were not offered into evidence or filed with the Court. In response, the government contends that if those portions of deposition transcripts attached to its post-trial brief are stricken, then the claimants' deposition transcripts which were filed by Warren should also be stricken. In ruling on the merits of each claimant's claims, the Court will not consider Attachments B through G of the United States' post-trial brief or those portions of the claimants' deposition transcripts that were not specifically made a part of the record in this case (through cross-examination or otherwise).

⁵ "A nonapplicant must show that he was a potential victim of unlawful discrimination. Because he is necessarily claiming that he was deterred from applying for the job by the employer's discriminatory practices, his is the not always easy burden of proving that he would have applied for the job had it not been for those practices." *Teamsters*, 431 U.S. at 367-68, 97 S. Ct. at 1871.

Where it is impossible to reconstruct the employment history of each claimant, back pay equal to the maximum amount which could have been earned but for the discrimination is appropriate. *Id.* at 549 (internal citations omitted).

Addressing an individual claimant's duty to mitigate, the *Suggs* Court stated that:

[a] plaintiff in an action under Title VII has a duty to mitigate damages; she may not remain unemployed and collect a windfall. This mitigation requirement contains the general element of reasonableness. "An employee is not required to go to heroic lengths in attempting to mitigate his damages, but only to take reasonable steps to do so." The finding that a Title VII claimant has exercised reasonable diligence in seeking other suitable employment following discriminatory [actions] is an issue of fact . . . 72 F.3d at 1233 (internal citations [*9] omitted). See Wooldridge, 875 F.2d at 548 ("A person discriminated against must exercise reasonable diligence to earn amounts which will reduce any back pay allowable"). See also Ford Motor Co. v. EEOC, 458 U.S. 219, 231, 102 S. Ct. 3057, 3065, 73 L. Ed. 2d 721 (1982). "Although the unemployed or underemployed claimant need not go into another line of work, accept a demotion, or take a demeaning position, he forfeits his right to backpay if he refuses a job substantially equivalent to the one he was denied." *Id.* at 231-32, 102 S. Ct. at 3065-66. In Wooldridge, the Sixth Circuit stated that:

defendant has "the burden of producing sufficient evidence to establish the amount of interim earnings or lack of diligence" in mitigating damages on the part of plaintiff. "The Defendant may satisfy his burden only if he establishes that: 1) there were substantially equivalent positions which were available; and 2) the claimant failed to use reasonable care

and diligence in seeking such positions." . . . defendant must meet this burden in the case of each individual claimant. . . . A claimant is not required to submit evidence of diligence and reasonable care in seeking [*10] employment until defendant has met its burden. 875 F.2d at 548 (internal citations omitted). Defendant must satisfy this burden by a preponderance of the evidence. *Id.* at 549.

1. Joseph Fears

The United States asserts that Joseph Fears would have applied for a police officer position with the City of Warren in 1979 but that he did not do so because of the City's preapplication residency requirement. Warren accepted police officer applications from April 11, 1979 until May 4, 1979, certifying a list from those applications on December 11, 1979. The government contends that Fears would have been hired between December 1979 and June 21, 1981, when the last person on the list was hired. On Fears' behalf, the government seeks monetary relief only. ⁶

Fears, an African American male, served in the United States Air Force from August 1975 until February 1979 when he was honorably discharged. While in the Air Force, Fears served as a law enforcement [*11] specialist performing military police work. In 1979, Fears earned an Associate's Degree in Criminal Justice. ⁷

After serving in the military, Fears moved back to Detroit in an attempt to find work in law enforcement. Fears testified that he was "pretty desperate to find a job in law enforcement." (Tr. Vol. I. at 100). Upon exiting the service, Fears updated an application he made with the City of Detroit Police Department (PD) in 1974.

In his job search efforts, Fears made inquiries throughout the Metropolitan Detroit area, targeting suburbs near 8 Mile Road which he was more familiar with and which were located closer to home. ⁸ Fears also regularly checked the *Detroit News* and *Free Press*, went to the Michigan Employment Security Commission (MESC), ⁹ made telephone calls [*12] and talked to friends, all in an

⁶ It does not seek employment on his behalf.

⁷ Fears testified that he possessed 64 college credits in 1979. (Tr. Vol. I. at 94). At trial, the City stipulated that Fears possessed the sufficient number of college credits necessary to serve as a Warren police officer. *Id.*

⁸ Fears testified that it would take him between five and ten minutes to drive from his home to the city limits of Warren. (Tr. Vol. I. at 96).

⁹ In February, 1979, when Fears went to the MESC, he was assigned a worker. (Tr. Vol. I. at 136-137). After Fears expressed his desire to work in law enforcement, his worker indicated that the MESC had no such listings. *Id.* at 136.

effort to secure employment. *Id.* at 97. If entities indicated that they were accepting applications, Fears would then fill one out. *Id.* Fears specifically telephoned Southfield, Oak Park, Ferndale, Hazel Park and Warren, all of which border 8 Mile, and called Highland Park and Metro Park Police. *Id.* at 98 & 102. Fears was interviewed by Highland Park sometime in 1979.

As to his contact with Warren, Fears testified that "somewhere around [the] time frame" of "March, April, May, June" is when he telephoned Warren (and other municipalities). *Id.* at 120. Fears "doubted" that the phone [*13] call could have taken place "as late as June or July or August of 1979". *Id.* at 120-21. At trial, Fears could not say with certainty when he made the telephone call. ¹⁰ On his claim form, however, Fears indicated that in April 1979, he called Warren about a police job. *See* Pl.'s Ex. 73 at 9.

During the phone call to Warren, Fears spoke with a female (whom he assumed to be a City employee) for a few minutes, explaining that he had just gotten out of the service and that he was seeking law enforcement employment. (Tr. Vol. I. at 105-06). In response to his inquiry of whether the City was accepting applications, the woman asked Fears if he was a Warren resident. After he informed her that he was a Detroit resident, [*14] she informed him that Warren was not accepting applications from non-residents. *Id.* *See* Pl.'s Ex. 73 at 9 ("called about [police] job, told no applications were being taken from nonresidence [sic]").

In August 1979, Fears obtained employment as a security officer with National Bank of Detroit (NBD). Once Fears obtained the position with NBD, he maintained a desire to pursue employment as a police officer but did not have as much time to seek such employment. (Tr. Vol. I. at 103-04). He testified, however, that in 1979, he would have accepted a job with Warren as a police officer over the security officer position with NBD because he wanted a job in law enforcement. *Id.* at 107-08. Fears was employed with NBD until January 1981.

From January 1981 until July 1985, Fears was employed by the United States Postal Service (USPS) as a letter carrier. During that time, Fears was still interested in law enforcement work, but did not apply with any jurisdictions. (Tr. Vol. I. at 110).

In July 1985, Fears was hired by the Detroit PD as a police officer and remained there until he was suspended on November 13, 1990. ¹¹ After his suspension from the Detroit PD, Fears returned to [*15] the MESC office to look for police officer employment. *Id.* at 138.

On December 12, 1990, Fears applied for a police officer position with the Township of Royal Oak. On January 8, 1991, he filled out an application with Warren for a police officer position. However, he did not show up to take a test necessary to obtain the position, because he was "very tired" and did not get up in time to take it. (Tr. Vol. I. at 138 & 143).

Since January 1991, Fears has worked sixteen hours per week for Royal Oak Township as a police officer, ¹² while working full-time with the USPS (his current employer) as a mail handler.

[*16] Based on the testimony elicited at trial and exhibits submitted by the parties, the Court believes that the government has satisfied its burden under *Teamsters* as it relates to Fears' claim. Because Fears did not apply to Warren, "his is the not always easy burden of proving that he would have applied for the [police officer] job [with Warren between April 11 and May 4, 1979] had it not been for [Warren's discriminatory] practices." *See Teamsters*, 431 U.S. at 367-68, 97 S. Ct. at 1871.

It is undisputed that Warren accepted applications for police officers between April 11 and May 4, 1979. Fears testified that he telephoned Warren sometime in March, April or May. On his claim form, which was prepared in 1993, Fears indicated that he telephoned Warren in April 1979. During the phone call Fears made to Warren to inquire about police officer employment, the woman who answered his call asked him if he was a Warren resident. When Fears indicated that he was a Detroit resident, the woman informed him that the City was not accepting applications from non-residents. Her answer suggests that, at the time of his call, the City was accepting applications for police officers but [*17] only from residents of the City. The Court believes that if Fears contacted Warren outside April 11-May 4, 1979, the woman would have informed him that the City was not accepting applications for police officers at that time. Based on Fears' undisputed testimony, his claim form, and the City employee's

¹⁰ Warren argues that if Fears called Warren in June, July or August (when the City was not recruiting for police officers), it was the fact that they were not recruiting between June and August, not the residency requirement, that precluded him from applying. (Def.'s Post-Trial Mem. at 8).

¹¹ The government argues that had Fears been hired by Warren between 1979 and 1981, he would have remained employed there as a police officer until November 13, 1990. (Tr. Vol. I. at 113).

¹² Fears has been on a leave of absence with Royal Oak Township since August 1995 through the date of the trial. (Tr. Vol. I. at 151).

response to his telephone inquiry, the Court finds that Fears did inquire about employment prior to April 11, 1979, and that he would have applied to Warren between April 11 and May 4, 1979 had it not been for the City's unlawful preapplication residency requirement.

The burden then rests on Warren to demonstrate that Fears was denied an employment opportunity for lawful reasons. *Teamsters*, 431 U.S. at 362, 97 S. Ct. at 1868. As to this point, Warren argues only that Fears' failure to mitigate damages precludes relief entirely. (Def.'s Post-Trial Mem. at 8-9). Warren's argument is rejected.

In *Thurman v. Yellow Freight Sys., Inc.*, 90 F.3d 1160 (6th Cir. 1996), the Court stated:

As a general rule, when a court finds discrimination it must award backpay. "The special factors which would constitute exceptional circumstances and prevent backpay awards are exceedingly rare." [*18] . . .

A plaintiff has a duty to mitigate his damages by seeking suitable employment with reasonable diligence. If an employee suffers a "wilful loss of earnings," however, the employer's backpay liability is tolled. It is the employer's burden to prove that backpay should be tolled. *Id.* at 1168-69 (internal citations omitted). See *Suggs*, 72 F.3d at 1233 ("A plaintiff in an action under Title VII has a duty to mitigate damages; she may not remain unemployed and collect a windfall")(internal citations omitted). In *Wooldridge*, the Sixth Circuit stated that:

. . . "The Defendant may satisfy his burden only if he establishes that: 1) there were substantially equivalent positions which were available; and 2) the claimant failed to use reasonable care and diligence in seeking such positions." . . . A claimant is not required to submit evidence of diligence and reasonable care in seeking employment until defendant has met its burden. 875 F.2d at 548 (internal citations omitted). Defendant must satisfy this burden by a preponderance of the evidence. *Id.* at 549.

Backpay in this case begins October 31, 1984. From that date through July 1985, Fears was [*19] employed full-time with the USPS as a letter carrier. From July 1985 until November 13, 1990, when Fears' backpay liability ends,

Fears was employed as a police officer with the Detroit PD. At no point between October 31, 1984 and November 13, 1990, was Fears unemployed. Warren has therefore failed to satisfy its burden that Fears failed to mitigate his damages.

In determining Fears' damages, the Court recognizes the "variables" that the Court may consider and which are disputed by the parties. Such variables include overtime pay, probability of hire, attrition factor, and interest. The Court has examined carefully the calculations submitted by both parties and the arguments offered in support of their respective positions. The Court believes that the computations submitted on behalf of Warren for the period beginning 11/1/84 through 1990¹³ is the most reasonable estimate of the damages to be awarded Mr. Fears. This calculation computes the "loss of earnings" "before adjusting for probability of hire" to be \$ 55,593.00.

[*20] The Court does not believe that any award to Fears should be based on overtime because this Court is not persuaded that he would have earned any significant amount of overtime between 1984 and 1990. Former police commissioner Paul Pash testified that even individuals who previously worked for a police department would not have earned the same amount of overtime as the individual Warren police officers with whom they are being compared unless they had previously worked in jobs that required similar job functions as those performed by the comparable Warren officers. There is no testimony that, prior to 1979, Fears had worked at a job performing similar job functions. Therefore, the Court cannot conclude that he would have received the same amount of overtime as the comparable Warren police officers. Furthermore, in determining the amount of damages which the City of Warren should be required to pay, the Court recognizes that it is awarding claimant damages for work he did not perform. See *LeBoeuf v. Ramsey*, 503 F. Supp. 747, 762 (D.Mass. 1980). "Any equitable claim to overtime pay is undercut by the fact that it would be paid for time not served . . ." In sum, the Court is not [*21] persuaded that Fears is entitled to compensation for overtime pay for the period October, 1994 to November, 1990.

The Court believes that the "attrition factor" used by Warren and the interest factor are both reasonable percentages. The Court rejects, however, Warren's argument that the amount should be reduced by the "probability of hire." During the relevant time period, there were 25 applicants and all of them were offered

¹³ See Ex. A attached to this Opinion which is part of defendants' Ex. 331.

positions as Warren police officers. 24 of those individuals were hired. The Court recognizes Warren's argument that had it not been for the residency requirement, a much larger number of qualified applicants would have applied, and thus Fears' likelihood of being hired is less than 100%. However, based on the information presented to this Court, this Court does not believe that it is capable of making a determination as to what percent represents the "probability of hire." Ambiguity should be "resolved against the discriminating employer" and where "it is impossible to reconstruct the employment of each claimant, backpay equal to the maximum amount which could have been earned but for the discrimination is appropriate." Wooldridge v. Marlene Indus. Corp., [*22] 875 F.2d 540, 549 (6th Cir. 1989).

For the reasons stated, Joseph Fears is awarded \$ 55,593.00. An Order consistent with this Opinion shall issue forthwith.¹⁴

2. Brady Foreman

At trial, the United States identified Brady Foreman's claim, stating that he would have applied as a police officer with Warren in July or August 1974 when Warren was accepting applications and that he would have been hired on January 18, 1975, but that he did not apply because of the City's preapplication residency requirement. The government seeks monetary relief on his behalf. However, in its motion for adoption of its recommendations for individual relief as it related to Foreman, the government claimed that Foreman would have applied for a police officer [*23] or firefighter position during the relevant time period, but that he did not do so because of the City's discriminatory recruitment practices. See Op. Re: Claims of Joseph Fears, Brady Foreman, et al. at 12 (Mar. 29, 1996). Warren's post-trial memorandum, as it relates to Foreman's claim, states in part that Foreman "failed to establish that Warren's recruitment was the reason for his not applying to Warren in 1974". (Def.'s Post-Trial Mem. at 16)(emphasis added). Because Warren did not object at trial or post-trial to the government's inclusion of a residency requirement claim on Foreman's behalf, the Court will address both claims as they relate to Foreman.

Foreman, an African American male, earned a Bachelor's of Science degree in criminal justice from Ferris State University (FSU) in May 1974. In approximately February

1974 (several months before graduation), Foreman began looking for employment in law enforcement. (Tr. Vol. II. at 77-78). Foreman's job search efforts included visiting the University's placement office, reading newspapers¹⁵ and word-of-mouth.

[*24] A couple of months before graduation from Ferris State, he applied with the Lansing Police Department (PD). Foreman interviewed with the Lansing PD but did not receive an offer. He applied to the Pontiac PD in spring 1974, took that city's test, underwent a background investigation and had an interview. However he did not receive an offer.

As to the Saginaw PD, Foreman learned of a position through the *Saginaw News*. He applied for the position before February 1974, took the test but did not pass.

Between January and March 1974, Foreman applied with the Detroit PD for a position he learned of in one of the Detroit newspapers. He took, but did not pass, the Detroit test.

Foreman also applied to several United States agencies. He learned of a position with the U.S. Marshal Service through the Saginaw office of the MESC, applied for a position with the U.S. Marshal Service in summer 1974 but never heard back from that agency.

As to the United States Treasury Department position, which Foreman discovered through the MESC office, he applied for the position in summer 1974.

Although Foreman remembers applying to the Bureau of Alcohol, Tobacco and Firearms, he has no recollection [*25] as to the application specifically; however, he never heard back from that agency after submitting his application.

Although he never contacted the City of Warren PD, Foreman testified that he considered applying there in the 1970's, "just prior to graduation". *Id.* at 94. He testified that he came to consider Warren because he "saw an ad in the Detroit Free Press or the Detroit News". *Id.* at 94-95.

¹⁴ Although the Court has reviewed and considered the deposition testimony and reports of Philip D. Tannian and Kenneth Myers, it does not find such testimony and report to be of any significance with respect to the claim of Joseph Fears. See fn. 3, *supra*.

¹⁵ Specifically, Foreman read the *Detroit Free Press*, the *Detroit News* and the *Saginaw News*. (Tr. Vol. II. at 78). In 1974, Foreman subscribed to the *Detroit News* and read the *Free Press* and the *Michigan Chronicle*. *Id.* at 87.

¹⁶ Foreman testified that the advertisement mentioned a residency requirement, and that he would have applied to Warren if the City had no such requirement. *Id.* at 96-97. After 1974, Foreman did not consider applying to the City of Warren. *Id.* at 95-96.

Between 1978 and 1982, Foreman applied to the Buena Vista PD but was not interviewed. ¹⁷ Foreman learned of that position through one of the Detroit newspapers.

[*26] Recruitment Claim

Based on Foreman's testimony that he saw an advertisement for a police officer position with the City of Warren in a newspaper, this Court finds that Foreman has not shown that the City's discriminatory recruitment practices caused him harm. This is especially true in light of Foreman's testimony that the advertisement he saw outlined the City's residency requirement. Therefore, Foreman's recruitment claim is denied. ¹⁸

Preapplication Residency Requirement Claim

Based on the testimony elicited at trial and exhibits submitted by the parties, the Court believes that the government [*27] has not satisfied its burden under *Teamsters* as it relates to Foreman's residency requirement claim. Because Foreman did not apply to Warren, "his is the not always easy burden of proving that he would have applied for the [police officer] job [with Warren in summer 1974] had it not been for [Warren's discriminatory] practices." *See Teamsters*, 431 U.S. at 367-68, 97 S. Ct. at 1871.

Foreman testified that he sought employment, in 1974, with four cities -- Lansing, Pontiac, Saginaw and Detroit. ¹⁹ He acknowledges that with respect to Lansing and Pontiac, he never heard anything further from them; and with respect to Saginaw and Detroit, he did not pass the test. He further testified that the only other police department that he even called or applied to after 1974 was the City of Buena Vista, but he could not "tell you why" he did not apply elsewhere. (Tr. Vol. II. at 136).

[*28] Foreman also testified that he indicated that in 1974 and 1975, the minimum salary that he would find to be acceptable was "\$ 25,000 a year." *Id.* at 143 (Ex. 81, p. 4). ²⁰

Based on the evidence presented, this Court is not persuaded that Foreman would have, in fact, applied to Warren in summer, 1974, a time when he applied to no other municipal police agency, particularly when he learned that the salary that he would receive, if he qualified and was hired, (\$ 12,938) was significantly less than that which he indicated would be "acceptable" to him.

Based on Foreman's, at-times unbelievable testimony, and the other evidence presented, this Court finds that the government has failed to show that Foreman would have, in fact, applied to the City of Warren for a police officer position in summer, 1974 if he had not learned of the residency requirement. Therefore, in this Court's opinion, [*29] Warren's residency requirement did not adversely affect his employment opportunity.

Because the evidence does not persuade this Court that Foreman was denied an employment opportunity with Warren because of Warren's residency requirement, Brady Foreman's claim for relief must be denied. An Order consistent with this Opinion will be issued forthwith.

3. Deborah Garnett

The United States asserts that Deborah Garnett would have applied for a Clerk-Typist II position with the City of Warren in April 1978 but that she did not apply because of the City's preapplication residency requirement. Warren accepted applications for that position in April 1978, ²¹ certifying a list from those applications in June 1978. *See* Pl.'s Exs. 8 & 9. On Garnett's behalf, the government seeks monetary relief.

Garnett, an African American female, graduated from high school in February 1974. From August 1974 [*30] until August 1976, she attended Highland Park Community

¹⁶ It is undisputed that Warren was not advertising for police officers in either of the Detroit newspapers in the 1970's. *See* Def.'s Post-Trial Mem. at 17 n.31.

¹⁷ Foreman remembered that he applied to Buena Vista sometime in the 80's. (Tr. Vol. II. at 91).

¹⁸ Although the government had, at times, asserted both a "recruitment" and a "residency" claim, counsel for the government stated at trial that the United States was asserting a claim on Foreman's behalf that he would have applied for a position as a police officer with the City of Warren in the summer of 1974 but "for his knowledge of the pre-application residency requirement . . ." (Tr. Vol. II. at 129).

¹⁹ In his claim form (Ex. 81), however, when asked to indicate the names of all the employers for whom he either filled out a job application or made an inquiry regarding a [police officer] job, he only listed Lansing, Michigan (1974).

²⁰ The starting salary for a police officer in Warren in 1974-75 was \$ 12,938. Stipulation of Facts No. 5; also Pl.'s Ex. 1.

²¹ It is undisputed that the closing date for applications for the Clerk-Typist II position was April 28, 1978.

College. She is currently employed as a social service specialist with Family Independence Agency (formerly Michigan Department of Social Services (MDSS)); she has been so employed since October 1995. Garnett has been with the Agency since July 1978 where she began employment as a Clerk-Typist II. ²²

In October 1976, after Garnett left Highland Community College, she worked for NBD as a clerk-typist. Garnett left her position with NBD in March 1978.

In April 1978, Garnett obtained employment with Chrysler Learning Center in Centerline, Michigan, as a clerk-typist. She began her employment with Chrysler on April 4, 1978 and left there in late May 1978, around Memorial Day, because of problematic working conditions. While with Chrysler, Garnett began to look for another [*31] job as a clerk-typist, receptionist or typist, by looking through classified advertisements and newspapers and by making telephone calls. (Tr. Vol. II. at 186 & 187).

Garnett learned of a job with Warren after overhearing a couple of clerical workers at Chrysler, upon their return from lunch, inform a typist in the pool that they heard Warren was accepting applications, and that they were going to, or had already, applied for a position there. *Id.* at 187-88. Garnett overheard this conversation in the latter part of April, first part of May. (Tr. Vol. III. at 10).

Garnett testified that she called Warren the second or third week of May, the latest date being May 15. *Id.* at 10-11. She called the City to find its location and to ask if the City accepted applications during the lunch hour. (Tr. Vol. II. at 189). Someone at Warren gave Garnett the location as Van Dyke and Ten Mile, and said that the City did accept applications during lunchtime. *Id.* Garnett did not go to Warren at that time. *Id.*

Approximately one week after her first phone call to Warren, she called Warren again and asked if Warren was still accepting applications. *Id.* at 189-90. Garnett was asked [*32] if she was a Warren resident or what city she lived in; when Garnett responded "Detroit", Garnett was informed that she had to be a Warren resident to fill out an application. *Id.* at 190. She decided not to go to Warren at that point.

It is undisputed that the closing date for applications for the Clerk-Typist II position at issue was April 28, 1978. Michael Smith, former personnel director for Warren,

testified that an individual's application would not be accepted for a position after the closing date. Garnett testified that she overheard a conversation about positions with Warren in late April, early May, and that sometime during the second or third week of May, with May 15 being the latest possible date, she telephoned Warren to obtain the City's location and policy on accepting applications during the lunch hour. One week later (approximately May 22), she telephoned Warren a second time and learned, for the first time, of the City's preapplication residency requirement. The timing of Garnett's second phone call (as well as her first) occurred after the relevant time period. Therefore, the City's preapplication residency requirement could not have caused her injury; [*33] rather, the timing of Garnett's inquiries to Warren prevented her from obtaining employment as a Clerk-Typist II during the April 1978 recruitment.

Since the Court does not believe that Garnett would have applied for a clerical position with Warren during the time Warren was accepting applications in 1978, Warren's residency requirement did not adversely affect her employment opportunity. Because the evidence does not persuade this Court that Garnett was denied an employment opportunity with Warren because of Warren's residency requirement, Deborah Garnett's claim for relief must be denied. An order consistent with this opinion will be issued forthwith.

4. William Holland

The United States asserts that William Holland would have applied to Warren for an Account Clerk I or Water Meter Reader position in 1980, but that he did not do so because he knew about the City's preapplication residency requirement. Warren was accepting applications for both positions in August 1980, certifying lists from those applications on November 25, 1980. The government seeks monetary relief ²³ and a job offer on Holland's behalf.

[*34] Holland, an African American male, served in the United States Air Force from June 1960 until November 1962. In November 1961, Holland received his G.E.D. While in the service, Holland took correspondence courses on electrical engineering through the University of Illinois.

From September 1970 until December 1972, Holland attended Walton School of Commerce in Chicago, Illinois,

²² In September 1979, Garnett was promoted to an assistance payments worker. (Tr. Vol. II. at 193). In October 1995, Garnett received her next promotion to her current position. *Id.*

²³ The government's requested figure takes into account Holland's failure to mitigate his damages after 1990. *See* Pl.'s Post-Trial Br. at 26 n.10.

where he majored in accounting. During that time period, Holland attended, for six months, Malcolm X Community College where he took some business courses.

From March 1972 until October 25, 1974, Holland worked for Graybar Electric Company, first as an auditor in the accounts payable department and later as an assistant accountant. In the assistant accountant position, Holland's duties included handling bank reconciliation statements, accounts payable invoices, accounts receivable invoices, some auditing, and corporate taxes, and drafting correspondence.

Late 1975, early 1976, Holland applied with Blue Cross for an accounting clerk position. During that same time, Holland applied to Fife Electric (a Graybar competitor) for an accounting clerk position but received no response from Fife. During that time, [*35] he also applied to Square D (another Graybar competitor) for the same type of position but did not receive employment as a result. In April 1976, Holland applied with the Detroit Police Department for a police officer position.

Holland testified that between 1974 and 1980, he applied with Detroit Edison at least two times and applied with Michigan Consolidated Gas (MichCon) once for meter reader positions. (Tr. Vol. III. at 72, 76 & 78-79).²⁴

From June 1976 until April 1979, Holland worked at the Chrysler Tank plant in Warren, Michigan, as a "battery man" in the mechanical garage.²⁵

[*36] Holland testified that in August 1980, he applied to the City of Detroit for an accounting clerk position. *Id.* at 77-79 & 106. *See* Pl.'s Ex. 69 at 5 (applied "7-9/mo./80"). When asked on cross-examination to explain his whereabouts in August 1980 (the sole month relevant to Holland's claims), the following testimony was elicited:

Q Now, what were you doing in August of 1980; do you know?

A I don't know exactly what you mean.

Q Well, what were you doing in August of 1980; do you have any recollection? . . .

* * *

A . . . You asked me what was I doing in August of 1980?

Q Right.

A And that's a vague question. It's a whole month.

* * *

A . . . But this is 1990, not 1980, so you have me lost. I don't know what you --

Q Okay. Well, I certainly don't want to confuse you, Mr. Holland, and I apologize if I have.

I take it that you can not tell His Honor today, under oath, what you were doing in August of 1980?

* * *

A In August of 1980. Not unless you can be more specific, I can't --

Q Well, let me see if I can't help you, Mr. Holland. You can't look His Honor in the eye and tell him whether you applied for any job in August [*37] of 1980, can you?

A Yes, I can.

Q . . . Tell His Honor how many jobs you applied for in August of 1980, 16 years ago?

A I'm really not sure.

Q . . . Can you think of any one job that you applied for in August of 1980?

A I'm pretty sure it was August of 1980 when I applied for the City of Detroit as Accounting Clerk I position that was posted in the City-County Building. Tr. Vol. III. at 104-06. Holland was unable to name any other places to which he applied in August 1980 for an accounting job. *Id.* at 106-07.

According to Holland's testimony, he applied with the Detroit Water Board for a water meter reader position in late 1980, early 1981. *Id.* at 76, 78 & 107-08. Sometime in 1985 marks the last time Holland applied for a meter reader position. *Id.* at 80.²⁶

In 1985, Holland worked with Lee's Alteration and Painting Company performing tile and carpet work. After

²⁴ According to Holland's claim form, he applied to Detroit Edison in November 1975 and November 1981, and applied with MichCon in March 1976. *See* Pl.'s Ex. 69 at 5.

²⁵ Holland was terminated from his employment with Chrysler. (Tr. Vol. III. at 72).

²⁶ Neither of these applications were listed on Holland's claim form. *See* Pl.'s Ex. 69 at 5.

working [*38] for Lee's, Holland worked for its parent company, Guaranteed Construction Company. He then worked for Dweller Construction Company in 1986, following which he worked for Dave King's Carpet and Tile Company as a carpet and tile installer. Holland worked with Dave King's "pretty much to 1990", performing his last job with Dave King's in January or February 1994. Holland testified that during all of the 1980's, he performed only painting, tile, electrical, plumbing and heating work.

Holland testified that the last time he applied for an accounting position was sometime in 1990 or 1991. *Id.* at 80. He also applied to Stone Container for an accounting position in 1990 or 1991. *Id.* at 74 & 80.

Between 1990 and 1994, Holland performed subcontract work in the building trades. He identified himself as an "independent contractor" during that time period.

Holland considered applying with Warren for a position in the City's sanitation department in 1994 but decided against it based on certain prerequisites for the position. *Id.* at 84-85.

Holland claims that he did not apply to Warren for an accounting or meter reader position between 1975 and 1980 because he was precluded from doing [*39] so because of the City's preapplication residency requirement. *Id.* at 82. He testified that he learned of the requirement while at Chrysler Tank from John, a friend of his who was hoping to obtain employment as a Warren police officer. *Id.* at 82-83. ²⁷ John told Holland that one had to live in Warren to apply for jobs with Warren's police department. *Id.* at 83. Holland testified that he understood the residency requirement to apply to all municipal positions with the City. *Id.* at 84.

The following testimony taken from Holland's deposition was later read into evidence:

"Q During this time frame, and we're talking about now '79 or '85, did you contact the City of Warren at all about a job?

* * *

A No, I did not.

Q Any reason why not?

A I wasn't aware there was any hiring going on, I suppose."

Id. at 110-11. Holland described that testimony [*40] as true, "in part". *Id.* at 111. He then explained the deposition testimony, stating

I didn't go to the City of Warren to see if they were doing any hiring. The reason I didn't go to the City of Warren to see if they did any hiring was because I knew that I could not be employed there in any event. That -- I think that's the reason I put, "I suppose," at the end because I didn't make a conscious effort to look for work in Warren. . . .*Id.* at 111-12.

On Holland's claim form, when asked what position(s) he would have applied for with Warren during the relevant time period had he known the City was accepting applications, Holland typed in "police/officer" and "fireman". (Pl.'s Ex. 69 at 12). He did not list the position of account-clerk or meter reader. (Tr. Vol. III. at 115). ²⁸ When asked on cross-examination how long after he filled out his claim form he came "from becoming someone who wanted to be a police officer and firefighter in the City of Warren to all of a sudden, I want to be an account clerk and meter reader", Holland responded, "I wanted to become a police officer or a firefighter. Not necessarily for the City of Warren, but for any municipality. I[*41] wasn't chosen in the City of Detroit." (Tr. Vol. III. at 116). Holland continued, stating that he did not lose his desire to work in the field of accounting, *id.* at 116-17, and that it was his impression that the only area he could list on the form was for the police or fire department. *Id.* at 117.

Based on the testimony elicited at trial and exhibits submitted by the parties, the Court believes that the government has not satisfied its burden under *Teamsters* as it relates to Holland's claims. Because Holland did not apply to Warren, "his is the not always easy burden of proving that he would have applied for the [account clerk I or water meter reader] job [with Warren in August 1980] had it not been for [Warren's discriminatory] practices." *See Teamsters*, 431 U.S. at 367-68, 97 [*42] S. Ct. at 1871. Holland's employment history consists, for the most part, of painting, tile, electrical, plumbing and heating work. He testified that during the entire decade of 1980, he performed jobs in only those fields. Although Holland testified (and indicated on his claim form) that he applied for a variety of jobs during the 1970's and 1980's, his job search was haphazard. Despite his two years of schooling

²⁷ Holland also testified that Warren's residency requirement was "common knowledge" where he worked. (Tr. Vol. III. at 83).

²⁸ Holland testified that in filling out the claim form that he submitted (Ex. 69), he "worked on it a couple of hours" and "discussed with one friend in a course of about over a month." (Tr. Vol. III. at 115).

in accounting, the only accounting position he held was in the early 1970's. Holland's next significant employment was serving as a "battery man" at an automobile plant, where he maintained batteries for tanks and forklifts. *See* Pl.'s Ex. 69 at 12. Holland's next documented employment involved tile and carpet work for Lee's. Based on his employment history, therefore, this Court does not find that he would have applied to Warren in August 1980 for the Account Clerk I or Water Meter Reader positions available with the City.

In so finding, the Court recognizes that, according to Holland's testimony, he applied for an account clerk position with another municipality (Detroit) in August 1980. Even assuming this were true, this Court's finding does not change. Based on evidence [*43] presented at trial, the Court concludes that Holland was interested in employment as a police officer. Holland applied to the Detroit Police Department in spring 1976 in an effort to secure employment as such. It was at that time that Holland allegedly learned, for the first time, of Warren's preapplication residency requirement from Holland's friend who also hoped to obtain employment as an officer. Based on this testimony and Holland's designation of "police" on his claim form as the position for which he would have applied with Warren, the Court believes that any interest Holland had in employment with Warren was limited to law enforcement.

In addition, based on Holland's inability to remember any fact about August 1980 (the sole month relevant to his claims) except an application to Detroit for an account clerk position, when he had not performed accounting work since 1974, the Court finds that Holland's testimony lacks credibility. This finding is bolstered by both parties' failure to acquire and Holland's refusal or inability to explain or produce certain income tax returns.

From the evidence presented, it appears to this Court that following his employment as an assistant [*44] accountant with Graybar in October 1974, Holland applied for available accounting and meter reader positions. However, once he obtained employment with Chrysler, where he remained until April 1979, his employment search appears to have stopped. Despite Holland's testimony that he applied to Detroit for an accounting position in August 1980, Holland was unable to identify one other position for which he applied. Holland did testify, however, that during the 1980's he worked in a variety of building trades. In August of 1980, when Warren was accepting applications for the two positions relevant

to Holland's claims, Holland had been out of the accounting world for six years and had never served as a meter reader in any capacity. The Court has no reason to believe, therefore, that Holland, who was performing building trades at the time, would have stopped to apply for any position with Warren. Holland's scattered employment and financial history leaves the Court with little evidence upon which to grant him relief. One piece of evidence the Court does rely on in making its determination is Holland's testimony that he did not contact Warren between 1979 and 1985 because he "wasn't [*45] aware there was any hiring going on", *see* Tr. Vol. III. at 110-11, rather than the City's residency requirement he learned about in 1976. Holland's attempt to explain away what the Court considers a plain statement only chipped away further at his credibility.

Since the Court does not believe that Holland would have applied for an Account Clerk I or Water Meter Reader position with Warren in 1980 (or any time between 1979 and 1985, for that matter), Warren's residency requirement did not adversely affect his employment opportunity. Because the evidence does not persuade this Court that Holland was denied an employment opportunity with Warren because of Warren's residency requirement, William Holland's claim for relief must be denied. An order consistent with this opinion will be issued forthwith.

5. Vanessa Jones

The United States asserts that Vanessa Jones would have applied for a police officer position with the City of Warren in January or February 1982, certifying a list from those applications on June 9, 1982, *see* Pl.'s Exs. 5-7, and that she would have been hired in August 1982. On Jones' behalf, the government seeks monetary relief ²⁹ and a job offer.

[*46] Jones, an African American female, graduated from Cass Technical High School in 1975. Jones attended both Wayne State University (WSU) and Wayne County Community College (WCCC). *Id.* She began attending WSU full-time in 1976, graduating in 1985, (Tr. Vol. I. at 236 & 156-57); ³⁰ she attended WCCC in the early 80's, graduating in 1986. As of December 1981, Jones had accumulated 58 credit hours.

Jones worked as a City of Detroit police officer from March 1978 until October 1979 when she was laid off. While a Detroit police officer, she worked on street patrol, in the commander's office and in the detention area.

²⁹ The government proposes two figures. one based on police cadet comparators' salaries and the other based on salaries of police officer comparators. (Pl.'s Post-Trial Br. at 15-16).

³⁰ Jones testified that she "very rarely" attended WSU full-time. (Tr. Vol. I. at 236).

In September 1979 and continuing after October 1979, Jones sought out employment opportunities in police-related areas. (Tr. Vol. I. at 159-60). Prior to her lay off, her job search was limited to telephone inquiries regarding openings.³¹ After the lay off, Jones began a "more aggressive" search, which included [*47] making inquiries, answering ads, making telephone calls,³² and attending fairs and recruitment drives. *Id.* Jones remembers calling local police departments,³³ including Ferndale, Southfield, Warren, Redford Township and possibly Harper Woods. *Id.* at 165. She also contacted the State of Michigan through Civil Service, the City of Detroit and the Department of Natural Resources (DNR) at that time. *Id.* at 166. *See* Pl.'s Ex. 57 at 5. After her lay off, she applied to Los Angeles PD, Dallas, Texas, Grand Rapids and others. (Tr. Vol. I. at 161).

As to Warren specifically, Jones testified that she called Warren before her lay off from Detroit PD. *Id.* at 192-93. Jones told the female [*48] who answered the phone that she was interested in a police officer position and that she was a Detroit officer anticipating a lay off. *Id.* at 193. Jones asked her what the requirements were for such a position or whether there was such a position available. *Id.* Jones recalls discussing the residency requirement, *i.e.*, that she had to live in Warren before she could apply for a police officer position. *Id.* at 193-94. "About a year or so later", Jones made another telephone inquiry to Warren. *Id.* at 195. From that conversation, Jones learned that nothing had changed relating to the residency requirement.

In May 1980, Jones applied for a police officer position with the City of Grand Rapids. *Id.* at 169. Despite her preference to work as a police officer, she rejected an offer from the Grand Rapids PD because she was given an offer as a laborer from General Electric (GE), a local employer based in Warren.³⁴ Had Jones not been called by GE the Sunday before the Monday she was scheduled to report in Grand Rapids, she would have reported for duty in Grand Rapids as scheduled.

[*49] Prior to accepting the position with GE, Jones terminated her lay-off status with the Detroit PD because

GE required her to do so. Despite her reluctance to do so, she testified that with 1,099 other people laid off from the Detroit PD, the prospects of her finding a job were become slimmer and slimmer.³⁵ After three weeks with GE, Jones was laid off.

Around the time of her lay off from GE, the State of Michigan called her with a job offer. She began employment as an unemployment claims worker II with the MESC in June 1980 where she remained for one year until she was laid off.

Just prior to being laid off by the MESC, Jones applied with the City of Toledo PD because she wanted to return to the field of police work. Jones rejected an offer of employment made in 1982 from that department because she heard from those who worked there that the "conditions there were just not acceptable in terms of working on the street." [*50] *Id.* at 180-81. The conditions included antiquated equipment, a very limited number of cars on the street, and working without back-up, all resulting in an unsafe environment.

Between June 1981 (when she was laid off by the MESC) and August 1981, Jones contacted police agencies, including the State of Michigan, Warren and Southfield. She also contacted security agencies, including Jowa Security Services, Bonded Security, and Guardian Security. In August 1981, Jones began employment with Jowa as a court security supervisor, where she remained until January 1985 when she resigned to begin employment with Samaritan Health Center as a security supervisor.³⁶ Jones worked for Samaritan until her resignation on June 28, 1987, to accept a position with Wackenhut Corporation as a manager of security operations for 36th District Court.³⁷ As of the trial date, Jones was currently with Wackenhut. [*51]

After 1984 (when the residency requirement was lifted as to police officers), Jones never applied for a police officer position with the City of Warren.

³¹ Jones testified that she made more than five such phone calls. (Tr. Vol. I. at 161-62).

³² After her lay off, Jones testified that she made thirty to forty phone calls to police agencies. (Tr. Vol. I. at 162).

³³ By "local", Jones was referring to suburban areas close to Detroit. (Tr. Vol. I. at 165).

³⁴ Jones testified that GE was close to home as opposed to Grand Rapids which was a three-hour drive from home. (Tr. Vol. I. at 170). Jones had no family or friends in the Grand Rapids area. *Id.* at 171.

³⁵ Jones testified that she was on the bottom of the recall list. (Tr. Vol. I. at 175).

³⁶ Jones testified on redirect that in 1981 or 1982 (after she began employment with Jowa), she contacted the Wayne County Sheriff's Office because her goal was still to find law enforcement rather than security work. (Tr. Vol. II. at 15-16).

³⁷ In her position with Wackenhut, Jones is in charge of a seventy-five member security staff. (Pl.'s Ex. 57 at 17).

Sometime in 1987 or 1988, Jones applied to Detroit PD for a police officer position in the training academy atmosphere.³⁸ In 1987, Jones withdrew her application from Detroit because she did not want to go back to street patrol.

Jones testified that after turning down the position with Toledo PD, she has no evidence or facts that would allow one to conclude that she was interested in working in a police department. (Tr. Vol. I. at 229-30). She testified on redirect, however, that had Warren offered her a position as a police officer [*52] in August 1982, she would have left her position with Jowa because she wanted to be a police officer, not a security guard. (Tr. Vol. II. at 21).

Based on the testimony elicited at trial and exhibits submitted, the Court believes that the government has not satisfied its burden under *Teamsters* as it relates to Jones' claim. Because she did not apply to Warren, "[hers] is the not always easy burden of proving that she would have applied for the [police officer] job [with Warren in early 1982] had it not been for [Warren's discriminatory] practices." See *Teamsters*, 431 U.S. at 367-68, 97 S. Ct. at 1871. In early 1982 when Warren was accepting applications for police officers, Jones was employed with Jowa as a court security supervisor as she had been since August 1981. The Court does not believe Jones' testimony that she would have left her employment with Jowa in August 1982 if Warren had offered her a police officer position.

In fall 1979 and 1980 (just before and after she was laid off from Detroit PD), Jones appeared to actively pursue employment in law enforcement as an officer. Her efforts proved fruitful, when in May 1980, the City of Grand Rapids PD offered [*53] her a position as a police officer which she was prepared to accept until a position as a laborer with a private local employer was offered to her. The Court recognizes that Grand Rapids was three hours from her home and that she had no friends and family there; however, the Court believes that her decision to accept a laborer position over one in law enforcement, a position which required her to terminate her recall rights with Detroit, supports the Court's conclusion that Jones' desire to obtain employment as a police officer was not as strong as the government and Jones would like the Court to think.

Jones sought employment as an officer again in spring 1981 when she applied with the Toledo PD. This effort also proved fruitful as she received an offer of employment from Toledo in 1982. As with Grand Rapids' offer, she rejected Toledo's offer, this time because the "conditions" of working were unsafe, conditions which were not acceptable to her. Instead, Jones accepted a position with

Jowa, a security agency where she remained for over three years. Since her employment with Jowa in August 1981 through today, Jones has held only supervisory positions. In 1987 or 1988, when an opportunity [*54] arose with the City of Detroit PD, Jones withdrew her application because she believed the opportunity involved training, rather than street patrol-which she no longer wanted to do.

Based on the evidence presented at trial, this Court believes that since Jones rejected Toledo's offer of employment as an officer in 1982, she had no real interest in serving as a "basic" police officer, *i.e.* one involved in street patrol, and instead was interested in positions with supervisory and advancement potential. After 1984, when Warren lifted its residency requirement, Jones never applied to Warren as a police officer. Perhaps in 1979 and 1980, when Jones says she contacted Warren regarding available officer positions, she would have applied as a patrol officer. However, the time period the Court must look to is the time when Warren was accepting applications for the position Jones contends she would have applied, in this case, the police officer positions recruited in January and February 1982. Jones admitted at trial that she has no evidence (documentary or factual) that would allow the Court to conclude that she was interested in working in a police department after having rejected [*55] Toledo's offer.

The Court does not believe that Jones would have applied for a position as a police officer with Warren in 1982. Therefore, in this Court's opinion, Warren's residency requirement did not adversely affect Jones' employment opportunity. Because the evidence does not persuade this Court that Jones was denied an employment opportunity with Warren because of Warren's residency requirement, Vanessa Jones' claim for relief must be denied. An order consistent with this opinion will be issued forthwith.

6. Carolyn Pace

The United States asserts that Carolyn Pace applied for the Clerk Typist I and Account Clerk I positions with Warren in 1985, but she was not hired, despite her qualifications, because of the City's preapplication residency requirement. Between February 15 and 25, 1985, Warren accepted applications for the Clerk Typist I position, certifying a list from those applications in July 1985. Warren accepted applications for the Account Clerk I position between May 21 and 31, 1985, certifying a list from those applications in August 1985. The government seeks monetary relief on Pace's behalf.

³⁸ Jones testified that she did not consider applying for any other police agencies at that time. (Tr. Vol. I. at 190).

Pace, an African American female, currently works for the City [*56] of Dearborn as a secretary in the legal department. She graduated from high school in 1974. From 1974 until 1976, she attended Detroit Institute of Technology, a business college. She then spent two years at Chrysler Corporation working at the axle plant, first in inspection, then on the assembly line. In 1979, Pace began employment with Michigan Bell as an operator, she was laid off from Michigan Bell in 1984.

After being laid off, she attended Dorsey Business College beginning on July 2, 1984. On March 29, 1985, Pace received a certificate in computer accounting from Dorsey. Prior to graduating from Dorsey, Pace began to look for an accounting, secretarial, typist or clerk position through leads in the placement office and in newspapers and through word-of-mouth.

Pace testified that before graduation, she applied with the cities of Detroit ³⁹ and Warren and with some smaller companies. (Tr. Vol. III. at 27-28). ⁴⁰ Pace applied with Detroit for a clerical or accounting position, such as a bookkeeper or a typist. *Id.* at 28. [*57]

According to her testimony, Pace applied with Warren for an accounting clerk position. *Id.*⁴¹ Although unsure, Pace believes she learned of the position with Warren through Dorsey's placement office. Pace is not sure when she went to Warren to apply. *Id.* at 46 & 49. ⁴² Pace testified that she could not say that she applied with Warren during the ten-day period in 1985 that Warren was accepting applications for account clerks or during the ten-day period that Warren was accepting applications for clerk-typists. *Id.* at 56.

[*58] To apply with Warren, Pace testified that she physically went to the City by car with her husband. When asked what happened when she went into Warren's building, Pace stated, "Not a lot. I would have given them -- turned in an application or submitted my resume. I don't know." *Id.* at 30-31. She could not describe the building she entered, the floor of the building she was on, ⁴³ or the person

who took her application. *Id.* at 54. She could not remember if she actually filled out an application or just submitted her resume. *Id.* at 31.

While there, she has no recollection of what was said, *id.* at 54, and has no recollection of anyone at Warren telling her that she had to be a Warren resident to apply. *Id.* at 50-51. She testified that no one refused to take her application because she was [*59] not a resident.

Pace never heard back from Warren, and she never returned to Warren.

Pace obtained a position as a data entry person with Ross Roy through a temporary agency. She later moved into the accounting incentive department of Ross Roy. Pace worked at Ross Roy from March 1985 until August 1986. While employed with Ross Roy, Pace was not "beating the streets" to find a job but had her ears open for permanent or full-time employment. (Tr. Vol. III. at 43-45).

She then worked for Allnet Communications Company as a telemarketer for two years. ⁴⁴

In 1988, after leaving Allnet, Pace attended a one-year Wayne State word processing program, from which she obtained a certificate of completion. On cross-examination, Pace agreed with defense counsel's statement that the only year she was "seriously looking for multiple job opportunities was in 1988". *Id.* at 55-56.

Pace was hired by the City of Dearborn, [*60] her current employer, in January 1989 as a typist-assistant. Pace was promoted to clerk-typist and later promoted to her current position as clerk-typist III. In 1993, while with Dearborn, she attended a paralegal studies program, from which she received a certificate.

The application periods for the Clerk Typist I and Account Clerk I positions with Warren were open between

³⁹ On her proof of claim form. Pace indicates that she applied with Detroit in 1988. *See* Pl.'s Ex. 38 at 5. On cross-examination, she testified that she applied to Detroit more than once. (Tr. Vol. III. at 45-46). On redirect, when asked when she applied to Detroit, Pace testified that she worked for Detroit while in high school, and that she applied to Detroit in 1994. *Id.* at 63.

⁴⁰ Later in her testimony, Pace stated that she was unsure if she applied with Warren for the account clerk position before or after graduation from Dorsey. (Tr. Vol. III. at 29).

⁴¹ Later in her testimony, she testified that she applied for the accounting clerk or clerk-typist, bookkeeper positions. (Tr. Vol. III. at 32).

⁴² Pace testified that she cannot tell the Court that she applied to Warren in January, March, April or June 1985. (Tr. Vol. III. at 51).

⁴³ She testified that she cannot remember if she was in the basement or on the first or second floor of City Hall, and that she did not know if City Hall even had a second floor. (Tr. Vol. III. at 54-55).

⁴⁴ While at Allnet, Pace worked part-time for Metric Medical Labs in data entry. (Tr. Vol. III. at 35).

February 15 and 25, 1985, and May 21 and 31, 1985, respectively. Pace graduated from Dorsey on March 29, 1985. Initially, she claims to have applied to Warren before graduating from Dorsey. This Court rejects this claim with respect to the Account Clerk I position, since the City did not accept applications for that position until two months after her graduation. Later in trial, she testified that she could not remember if she applied to Warren before or after graduation. However, she also testified that she could not tell the Court whether she applied to Warren as early as January 1985 or as late as June 1985.

She did testify, however, that whenever she applied through the submission of her resume or an application, her application was accepted by Warren. This testimony suggests to the Court that Pace [*61] applied with Warren after October 1986 when the preapplication residency requirement was lifted as to municipal positions (other than police officer or firefighter). This belief is bolstered by Pace's testimony that the only year in which she was seriously looking for employment was 1988. Moreover, in a letter prepared by the government sent to Pace, the government stated:

Our records indicate that you applied for employment with the City of Warren at some point after October 1986. This letter is to inform you about the decision in a lawsuit that may affect your rights. Def.'s Ex. 412 (emphasis added). See Tr. Vol. III. at 49-50.

Based on Pace's sketchy testimony, in which she is unable to give any details whatsoever on her application with Warren, and based on Pace's testimony that Warren received her application despite her lack of residency in Warren, the Court believes that Pace applied to Warren, if at all, outside the two ten-day periods in 1985 relevant to Pace's claims.

Since the Court does not believe that Pace applied for a Clerk Typist I position or an Account Clerk I position with Warren during the time Warren was accepting applications, Warren's residency [*62] requirement did not adversely affect her employment opportunity. Because the evidence does not persuade this Court that Pace was denied an employment opportunity with Warren because of Warren's residency requirement, Carolyn Pace's claim for relief must be denied. An order consistent with this opinion will be issued forthwith.

7. Landy Smith, III

The United States asserts that Landy Smith, III would have applied for a police cadet position with the City of Warren in 1982 but that he did not do so because of the City's preapplication residency requirement. Warren accepted police cadet applications in January and February 1982, certifying a list from those applications in June 1982. On Smith's behalf, the government seeks monetary relief ⁴⁵ and a position with the City of Warren. ⁴⁶

[*63] Smith, an African American male, was hired by the Detroit PD on March 27, 1978. On October 12, 1979, Smith was laid off from the Detroit PD. When Smith was laid off, he was earning approximately \$ 20,000 annually. (Tr. Vol. I at 12). At that time, the Detroit PD provided Smith (and other laid-off Detroit police officers) with a package prepared by the MESC to assist the laid-off officers in seeking employment. Following his lay off, Smith contacted law enforcement agencies with Warren, Royal Oak or Oak Park, Southfield, Wayne County Sheriff's Department, Sterling or Madison Heights, Toledo, Ohio, and Jackson Prison. (Tr. Vol. I at 12-14, 48 & 49). When Smith telephoned Warren, he received information that the City had a residency requirement; he asked if the City was willing to waive the requirement, but the City indicated that it would not. *Id.* at 15. Because Warren would not accept it, Smith did not submit an application to the *City*. In November 1980, Smith travelled to Fort Lauderdale and applied with an agency there. See Pl.'s Ex. 30.

Smith's first employment after being laid off was with Sibley Shoes from April 7, 1980 until November 30, 1981. While employed with [*64] Sibley Shoes, Smith worked part-time in security with Northwest Activities Center for less than two years. Smith also worked part-time with Rainey's Security and Midwest Patrol. Smith worked full-time for Midwest in the early 1980's. Sometime in the early 80's, Smith was employed as a warrant officer with Highland Park for less than three months. On May 28, 1985, Smith was recalled to the Detroit PD. Smith was promoted to sergeant by the Detroit PD in May 1989.

Smith testified that from 1979 until 1985, he was interested in employment as a police officer. During that time period, Smith has no recollection of applying for a police cadet position; he testified, however, that he would have applied for a cadet position that would have led to the opportunity to be a police officer. *Id.* at 27-28. On Smith's

⁴⁵ The government asserts that a monetary award in Smith's favor should be based on the average salaries of cadets hired in 1982 (deducting monies Smith earned throughout the years and adding interest). (Tr. Vol. I at 36-37).

⁴⁶ Smith testified at trial that he is currently interested in employment with Warren depending on salary and benefits and the position he would hold there. (Tr. Vol. I at 34).

claim form, he indicated that the minimum salary acceptable to him from June until October 1979 was \$ 16,000. (Pl.'s Ex. 20 at 4). Smith stated that he would have accepted a police cadet position paying between \$ 15,000 and \$ 16,000 per year "and that an offer to reimburse college tuition costs would have helped him decide." (Tr. Vol. I. at 77). When asked by defense counsel why [*65] Smith did not apply for every police officer position advertised in the *Detroit News* and *Detroit Free Press* between 1981 and the present, Smith stated:

Well, it's like this, I guess, it's not that just because I wanted a police officer's job, it does not mean that I was willing to take anything. Atlanta was only paying \$ 13,000. Then you talk about the cost of relocating and moving and so forth. So no, so there would have been several police departments that I may not have applied for. . . . *Id.* at 80-81 (emphases added). Smith then testified that he knew people who went to Atlanta and "worked for \$ 13,000 and they had to work second jobs and I didn't want to do that." *Id.* at 82 (emphasis added).

He testified that from 1979 until 1985, he would have been willing to attend school to gain the necessary college credits necessary to become a full-fledged police officer in another jurisdiction. On cross-examination, however, Smith testified that between 1979 and 1985, he could not afford college. *Id.* at 84-85. The following testimony was then elicited:

Q So you made the conscious decision for money or whatever reasons that you were not [*66] going to upgrade your educational background and experience so that you would be qualified for other police department positions?

A No, I was not able to do so. . . . I was unable [to do so]. *Id.* at 85. Prior to his promotion to sergeant in May 1989, Smith attended Wayne County Community College. By the time of his promotion, he had acquired at least thirty (30) college credit hours. *Id.* at 61. ⁴⁷ As of June 1996, Smith possessed sixty (60) credit hours. *Id.* at 8-9.

On cross-examination, Smith testified that had he been hired by Warren in 1982, a "strong possibility" existed that he would not have returned to Detroit when recalled in 1985 because he would have earned more seniority with the City by that time. *Id.* at 60.

Based on the testimony elicited at trial and exhibits submitted by the parties, the Court believes that the government has not satisfied its burden under *Teamsters* [*67] as it relates to Smith's claim. Because Smith did not apply to Warren, "his is the not always easy burden of proving that he would have applied for the [police cadet] job [with Warren in early 1982] had it not been for [Warren's discriminatory] practices." *See Teamsters*, 431 U.S. at 367-68, 97 S. Ct. at 1871. Around the time of Smith's lay off from the Detroit PD in October 1979, Smith contacted numerous law enforcement agencies, including Warren's, in search of employment. In early 1982, when Warren was accepting applications for police cadets, Smith was employed by Midwest. Despite his testimony that he would have applied for a police cadet position that led to an officer position, Smith testified that he never applied for a police cadet position from 1979 to 1985. On his claim form and in deposition testimony, Smith indicated that he would have accepted a police cadet position paying between \$ 15,000 and \$ 16,000 annually. It is undisputed that the starting salary for a Warren cadet in 1982 was \$ 13,300. (Pl.'s Ex. 5). Smith specifically testified that there were police departments, such as Atlanta's, for which he would not have applied. Atlanta paid \$ 13,000 annually, [*68] causing that department's employees to work second jobs, which Smith admittedly did not want to do.

The Court does not believe that Smith would have applied for, or accepted, a position as a police cadet with Warren in 1982. Therefore, in this Court's opinion, Warren's residency requirement did not adversely affect Smith's employment opportunity. Because the evidence does not persuade this Court that Smith was denied an employment opportunity with Warren because of Warren's residency requirement, Landy Smith, III's claim for relief must be denied. An order consistent with this opinion will be issued forthwith.

8. Edward Walters

The United States asserts that Edward Walters would have applied for a police officer position with Warren in February or March 1979, but that he did not apply because Warren did not advertise in the Detroit newspapers. Warren certified a list from 1979 applications on December 11, 1979 and offered all twenty-five people on the list an officer position. On Walters' behalf, the government seeks monetary relief.

Walters, an African American male, currently owns Northwest Detroit Lawn Spray, a company that services

⁴⁷ Smith testified that he attended college "just prior" to his promotion. (Tr. Vol. I. at 8).

commercial and residential lawns [*69] with fertilization, weed control and disease control. ⁴⁸ Walters graduated from high school on August 10, 1973. Following high school, he attended Detroit Institute of Technology for two years, followed by his attendance at Macomb Community College for two years; in both institutions, he studied engineering and business.

From 1976 through 1980, Walters worked for Plaza Food Center, initially as a stock clerk and later as an assistant manager. While working there, beginning in "1978 or so", Walters began to seek other employment that would pay more money to support his family. ⁴⁹ He applied for openings with the Detroit PD in 1978 or 1979 and with the Michigan State Police (MSP) as a state trooper in 1979; Walters learned of those openings in advertisements in the *Detroit News*.

[*70] Walters took and passed the Detroit written exam, receiving one of the highest scores, and passed the agility test. According to Walters, he was not offered a position because Detroit was going through "massive layoffs." (Tr. Vol. II. at 33-34). He testified, however, that he would have accepted a position with Detroit PD in 1979.

Walters took and passed the MSP written exam but was told that the MSP wanted individuals who scored higher than he did. *Id.* at 37. He testified that he would have accepted a position with the MSP at that time. *Id.* at 38.

Walters testified that he was not aware that Warren was accepting applications for police officers in 1979, and that he did not see advertisements for such positions in the newspapers he read. *Id.*

During 1980-1983, Walters worked for Prudential Insurance Company of America as a sales agent of various types of insurance. From 1983 until 1985, Walters worked for Jackson National Insurance Company as an insurance salesman.

In approximately 1985, Detroit PD contacted Walters, asking him to come in for another interview. Walters was not made an offer of employment based on his admitted recent marijuana use. Had he been offered [*71] a position with Detroit as an officer in 1985, Walters would have accepted it.

After working for Jackson National, Walters worked for Chemlawn Services for six to seven years. Walters learned

of the position with Chemlawn through an advertisement in the *Detroit News*.

From 1992 until 1993, Walters worked for Eradico Lawn Care. Walters learned of that position in the *Observer* newspaper, a publication based in Redford.

Walters testified that around the time he began working for Chemlawn, he was no longer interested in police work because police were given less respect and the work was "pretty dangerous". (Tr. Vol. II. at 45-46). ⁵⁰ Throughout his employment history, including 1979, Walters has always wanted to own his own business. *Id.* at 46.

On cross-examination, Walters testified that the first time he ever applied for a police officer position [*72] was in May or June 1979, *id.* at 49, and that prior to that time, he took no action to fill out an application for a police officer job. Since May or June 1979, Walters has applied for no police officer position. He testified that part of the reason he did not apply for a police officer position prior to May or June 1979 was because he did not see "anything in the papers regarding that". *Id.* at 53. Walters then characterized the following as a fair statement:

Prior to May or June of 1979 when you applied to the State Police and the City of Detroit, you were not looking at the Detroit News and Free Press to see whether other police agencies were seeking candidates? *Id.* at 55. On his claim form, Walters indicated that he actively sought employment from June 1979 through April 1980. (Pl.'s Ex. 48 at 4). On cross-examination, Walters testified that at no time in his life did he ever consider applying to the City of Warren in any capacity. (Tr. Vol. II. at 59).

Based on the testimony elicited at trial and exhibits submitted by the parties, the Court believes that the government has not satisfied its burden under *Teamsters* as it relates to Walters' claim. Because [*73] Walters did not apply to Warren, "his is the not always easy burden of proving that he would have applied for the [police officer] job [with Warren in early 1979] had it not been for [Warren's discriminatory] practices." See *Teamsters*, 431 U.S. at 367-68, 97 S. Ct. at 1871. During the relevant application period (February/March 1979), Walters was

⁴⁸ Walters began the business in February 1993. (Tr. Vol. II. at 29).

⁴⁹ Walters testified that he was focused on looking for a police job at that point. According to Walters, he wanted to be a policeman or fireman since he was a child. (Tr. Vol. II. at 33).

⁵⁰ On cross-examination, Walters reiterated that around 1984 or 1985, he was no longer interested in serving as a police officer. (Tr. Vol. II. at 50).

employed at Plaza Food Center. He testified at trial that during his employment with Plaza Food Center he became interested in employment as a police officer. However, he also testified that the first time he applied for such a position was in May or June 1979 (outside the relevant time period), and that prior to that date, he took no action to fill out a police officer application in any jurisdiction. He also testified that at no time in his life did he consider applying to Warren for any position. Based on Walters' frank testimony and claim form (which designates June 1979 as the onset of an active employment search period), the Court believes that the government has failed to demonstrate that Walters would have applied for a police officer position with Warren in early 1979 had Warren advertised for such a position in the Detroit [*74] newspapers. During the relevant time, according to Walters' own testimony, he was not looking in the Detroit newspapers to see whether police agencies were seeking candidates.

Because the Court does not believe that Walters would have applied for a position as a police officer with Warren in 1979, Warren's discriminatory recruitment practices did not adversely affect his employment opportunity. Because the evidence does not persuade this Court that Walters was denied an employment opportunity with Warren because of Warren's recruitment practices, Edward Walters' claim for relief must be denied. An order consistent with this opinion will be issued forthwith.

For the reasons set forth above, the Court grants the relief sought by the government on behalf of claimant Joseph Fears and awards plaintiff relief on behalf of claimant Fears in the amount of \$ 55,593.00. The Court denies plaintiff's claims for relief on behalf of all other claimants.

An Order consistent with this Opinion shall issue forthwith.

DATED: NOV 6 1996

PATRICK J. DUGGAN

UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

12:29 Tuesday, June 11, 1996 29

UNITED STATES V. CITY OF WARREN

DAMAGES [*75] CALCULATIONS FOR JOSEPH LEE FEARS (ELIGIBILITY LIST = POLICE OFFICER 12/79)

TIME PERIOD 11/1/84 - 3/31/96

12:29 Tuesday, June 11, 1996 29

SCENARIO 5: EXCLUDE OVERTIME EARNINGS FOR COMPARATORS

CONCLUSION

YEAR	QUARTER	EXPECTED EARNINGS	ACTUAL EARNINGS	LOST EARNINGS	ATTRITION FACTOR	ADJUSTED LOST EARNINGS	INTEREST FACTOR	LOST EARNINGS 3/96 EQUIV
1984	4	\$ 5,530	\$ 4,479	\$ 1,051	87.50	\$ 920	1.50	\$ 1,379
1984		\$ 5,530	\$ 4,479	\$ 1,051		\$ 920		\$ 1,379
1985	1	\$ 7,971	\$ 6,972	\$ 999	87.50	\$ 874	1.45	\$ 1,265
	2	\$ 7,971	\$ 7,050	\$ 921	87.50	\$ 806	1.45	\$ 1,167
	3	\$ 7,971	\$ 5,661	\$ 2,310	87.50	\$ 2,021	1.45	\$ 2,924
	4	\$ 7,971	\$ 5,376	\$ 2,595	87.50	\$ 2,271	1.45	\$ 3,286
1985		\$ 31,885	\$ 25,059	\$ 6,825		\$ 5,972		\$ 8,642
1986	1	\$ 8,401	\$ 5,931	\$ 2,470	87.50	\$ 2,161	1.42	\$ 3,070
	2	\$ 8,401	\$ 5,931	\$ 2,470	87.50	\$ 2,161	1.42	\$ 3,070
	3	\$ 8,401	\$ 5,931	\$ 2,470	87.50	\$ 2,161	1.42	\$ 3,070
	4	\$ 8,401	\$ 5,931	\$ 2,470	87.50	\$ 2,161	1.42	\$ 3,070
1986		\$ 33,604	\$ 23,725	\$ 9,879		\$ 8,644		\$ 12,280
1987	1	\$ 8,834	\$ 7,106	\$ 1,728	87.50	\$ 1,512	1.37	\$ 2,072
	2	\$ 8,834	\$ 7,106	\$ 1,728	87.50	\$ 1,512	1.37	\$ 2,072
	3	\$ 8,834	\$ 7,106	\$ 1,728	87.50	\$ 1,512	1.37	\$ 2,072

YEAR	QUARTER	EXPECTED EARNINGS	ACTUAL EARNINGS	LOST EARNINGS	ATTRITION FACTOR	ADJUSTED LOST EARNINGS	INTEREST FACTOR	LOST EARNINGS 3/96 EQUIV
	4	\$ 8,834	\$ 7,106	\$ 1,728	87.50	\$ 1,512	1.37	\$ 2,072
1987		\$ 35,335	\$ 28,423	\$ 6,911		\$ 6,047		\$ 8,289
1988	1	\$ 9,351	\$ 7,285	\$ 2,066	87.50	\$ 1,808	1.32	\$ 2,379
	2	\$ 9,351	\$ 7,285	\$ 2,066	87.50	\$ 1,808	1.32	\$ 2,379
	3	\$ 9,351	\$ 7,285	\$ 2,066	87.50	\$ 1,808	1.32	\$ 2,379
	4	\$ 9,351	\$ 7,285	\$ 2,066	87.50	\$ 1,808	1.32	\$ 2,379
1988		\$ 37,405	\$ 29,142	\$ 8,263		\$ 7,230		\$ 9,516
1989	1	\$ 9,489	\$ 7,962	\$ 1,527	87.50	\$ 1,336	1.26	\$ 1,678
	2	\$ 9,489	\$ 7,962	\$ 1,527	87.50	\$ 1,336	1.26	\$ 1,678
	3	\$ 9,489	\$ 7,962	\$ 1,527	87.50	\$ 1,336	1.26	\$ 1,678
	4	\$ 9,489	\$ 7,962	\$ 1,527	87.50	\$ 1,336	1.26	\$ 1,678
1989		\$ 37,956	\$ 31,848	\$ 6,108		\$ 5,344		\$ 6,711
1990	1	\$ 10,442	\$ 8,666	\$ 1,776	87.50	\$ 1,554	1.19	\$ 1,851
	2	\$ 10,442	\$ 8,666	\$ 1,776	87.50	\$ 1,554	1.19	\$ 1,851
	3	\$ 10,442	\$ 8,666	\$ 1,776	87.50	\$ 1,554	1.19	\$ 1,851
	4	\$ 6,962	\$ 3,869	\$ 3,093	87.50	\$ 2,706	1.19	\$ 3,224
1990		\$ 38,288	\$ 29,867	\$ 8,421		\$ 7,369		\$ 8,778

TOTAL BACKPAY BEFORE ADJUSTING FOR PROBABILITY OF HIRE: \$ 55,593

PROBABILITY OF HIRE: 12.1 %

TOTAL BACKPAY AFTER ADJUSTING FOR PROBABILITY OF HIRE: \$ 6,727

[*76]