

1978 WL 125
United States District Court, E.D. Michigan, Southern Division.

Grace A. Schaefer et al., Plaintiffs
v.
Philip G. Tannian et al., Defendants.

Civil Action No. 39943 | August 4, 1978

Opinion

FREEMAN, D. J.

*1 This class action was commenced on April 10, 1973, on behalf of all women who have been employed by or were applicants for employment with the Detroit Police Department (DPD) since April 10, 1970. As originally filed, the defendants were the principal officials of the City of Detroit charged with the operation of the DPD and with the responsibility for its hiring, assignment and promotion practices. The Detroit Police Officers' Association (DPOA) and the Detroit Police Lieutenants' and Sergeants' Association (DPSLA) were subsequently added as defendants, without objection. These defendants were charged with discrimination on the basis of sex in recruiting, examining, hiring, promoting and compensating employees and potential employees of the DPD in violation of 42 USC § 2000(e) *et seq.*, and 42 USC § 1983.

On May 13, 1974, this Court granted plaintiffs' motion for partial summary judgment and held, on the basis of undisputed facts, that the defendants had violated Title VII of the CRA of 1964 and 42 USC § 1983 by fostering a broad-based pattern and practice of discrimination based on sex in hiring and assignment policies. The Court found that the record in this case presented "impressive evidence" establishing that the hiring and assignment policies of the DPD had the unlawful effect of limiting, segregating and classifying women employees and applicants for employment in a way which would both deprive them of employment opportunities and otherwise adversely affect their status as employees because of their sex. *See* the Court's Memorandum Opinion reported at 394 F. Supp. 1128.

In keeping with the Congressional purposes implicit in Title VII, this Court also entered a preliminary injunction on May 13, 1974. That injunction called for affirmative action to eliminate, once and for all, the unlawful discrimination in the DPD's hiring and assignment policies. By that injunction, the DPD was specifically ordered to administer all future written entrance examinations to men and women alike, and to expedite the examination and oral interview process for those women who had been denied the opportunity to take an entrance examination or be interviewed in the past. The DPD was further ordered to assign all employees to divisions of the Police Department without regard to sex, and to begin immediately the use of recruiting material which stresses the equal role of men and women in the Department. Finally, to ensure that women, as a class, would be provided their rightful place in the Department, the DPD was ordered to hire at least one qualified female for each male hired into the Department until further order of the Court, or until the list of eligible female applicants who had applied prior to the date of that injunction was exhausted.

On June 7, 1974, this Court granted plaintiffs' second motion for partial summary judgment and found, on the basis of undisputed facts, that the DPD had also violated Title VII or the CRA of 1964 and 42 USC § 1983 by fostering promotional policies and practices which discriminated against the plaintiffs on the basis of sex. A second preliminary injunction was issued on that same date, ordering the DPD to take affirmative action to eliminate discrimination in its promotional policies and practices. The DPD was ordered to increase the number of women in classes to be held for candidates for promotion to the rank of sergeant and was otherwise required to promote persons to the rank of sergeant without regard to sex.

*2 On April 30, 1975, plaintiffs presented the Court with their third motion for a preliminary injunction. This time they sought to enjoin the defendants from laying off or demoting any female police officers, sergeants, or lieutenants who had been hired or promoted pursuant to the Court's preliminary injunctions of May 13 and June 7, 1974. These layoffs and demotions were threatened as a result of the budgetary deficits which the City of Detroit was experiencing. Those persons subject to layoff and demotion were selected according to the provisions contained in the collective bargaining agreements between the City of Detroit and the DPOA and the DPLSA. These agreements provided that layoffs are to be made according to seniority on a "last hired, first fired" basis and when demotions in rank are necessitated, those with the least time in the particular rank are

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demoted first.

After conducting a hearing and after considering the testimony as well as the oral and written arguments of the parties, the Court concluded that the plaintiffs were entitled to an extra measure of relief. The Court found that the relief granted plaintiffs by the Court's prior injunctive orders would be diminished if the proposed layoffs and demotions were carried out under the collective bargaining agreements because a disproportionately heavy burden would fall on newly hired policewomen. This result was certain to occur because newly hired policewomen were prevented by the past discriminatory practices of the DPD from obtaining sufficient seniority to withstand the layoffs and demotions. The Court held that, under these circumstances, the "last hired-first fired" seniority system would serve to perpetuate the past discrimination previously found unlawful under Title VII of the CRA of 1964 and the equities of the case justified the granting of further injunctive relief. *See* the Court's Memorandum Opinion reported at 394 F. Supp. 1136.

In an attempt to accord an extra measure of relief to the victims of past discrimination and, at the same time, to ensure that fewer senior officers would be laid off or demoted, this Court ordered in its preliminary injunction of May 12, 1975, that no federally funded employees, either male or female, be laid off or demoted. This order was fashioned in light of the various proposals of the parties, the congressional purposes underlying Title VII as well as the public interest involved. It was admittedly a compromise between conflicting interests.

In fashioning the May 14, 1975, preliminary injunction, this Court concluded that since federally funded officers were the most recently hired, their layoffs were mandated not by the City's budgetary problems, but because of the seniority provisions encompassed in the collective bargaining agreement. The Court reasoned that if federally funded officers, male or female, were not laid off, the City would be allowed to lay off fewer police officers benefiting not only plaintiffs, but the public as well. Moreover, at that time, the Court was advised that all of the women hired pursuant to the Court's order of May 13, 1974, were federally funded under the Comprehensive Employment and Training Act of 1973 (CETA), and that all of the newly hired women officers would therefore be protected from layoff. This fact, however, has subsequently been shown to be incorrect.

*3 After perfecting a timely appeal of the Court's preliminary injunction of May 12, 1975, the defendants requested this Court to stay the execution of the injunction pending the disposition of their appeal. That stay was denied. *See* the Court's Memorandum Opinion, Civil No. 39943 (June 21, 1976).

On June 25, 1976, the Sixth Circuit Court of Appeals handed down its *per curiam* decision on defendants' appeal from this Court's May 12, 1975 preliminary injunction. The Sixth Circuit vacated that portion of the preliminary injunction which had restrained the layoff of federally funded male police officers. The Court, however, declined to vacate or otherwise disturb that portion of the preliminary injunction restraining the layoff of federally funded female officers. The Sixth Circuit remanded the case back to this Court in light of the recent United States Supreme Court decision in *Franks v. Bowman Transportation Co.*, [11 EPD P 10,777] 424 U.S. 747 (1976) which was decided after this Court entered its preliminary injunction of May 12, 1975. In remanding, the Sixth Circuit stated that the *Franks* decision "appears to require individual determinations as to the remedial seniority status to be accorded to victims of discriminatory hiring practices.

On June 29, 1976, the plaintiffs applied for a temporary restraining order supplementing ^{and/or} amending this Court's preliminary injunction of May 12, 1975, in light of the June 25, 1976, *per curiam* decision of the Sixth Circuit. The plaintiffs requested that the City be restrained from laying off any female police officer employed by the DPD, pending this Court's determination of each officer's individual entitlement to an award of retroactive seniority. It was at this time that the Court first learned of the fact that some of the newly hired women police officers were not funded with federal funds under the CETA program.

On June 30, 1976, this Court granted plaintiffs' application for a temporary restraining order. The Court temporarily restrained the City from laying off any female police officer, whether hired with federal funds or the regular funds of the City of Detroit. The Court further ordered that an expeditious hearing or hearings be held to determine which female police officers, whose layoffs were temporarily enjoined, are entitled to continued protection under Title VII of the CRA of 1964.

In a memorandum opinion dated August 27, 1976, the Court held that the plaintiffs were entitled to retroactive seniority relief and provided general guidelines with respect to who in the class is entitled to seniority and how much retroactive seniority should be granted to each member of the class.

The plaintiffs have now requested the Court to provide further guidelines with respect to two issues:

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First, whether the plaintiffs are entitled to retroactive seniority for all purposes; and

Second, whether an award of retroactive seniority may predate the effective date of the 1972 amendments to Title VII.

I. The Scope of Retroactive Seniority

*4 Although the Court’s opinion regarding the award of retroactive seniority was not limited in any respect, the order issued pursuant to that opinion only required that the Police Department realign its seniority list to provide the plaintiffs with seniority status for purposes of layoff and recall. The plaintiff has now requested that the Court broaden the scope of its earlier holding to include an award of retroactive seniority for all purposes.

There is no question that an award of seniority for all purposes is an available remedy in all cases. In *Franks v. Bowman Transportation Co.*, [11 EPD P 10,777] 424 U.S. 747 (1976), the Supreme Court held that “class-based seniority relief for identifiable victims of illegal hiring discrimination is a form of relief generally appropriate” under Title VII. That such relief may include an award of seniority for all purposes is also undisputed. As the Supreme Court pointed out in *Franks, supra*,

Seniority principles are increasingly used to allocate entitlements to scarce benefits among competing employees . . . and to compute noncompetitive benefits earned under the contract of employment. . . . Included among the benefits, options, and safeguards affected by competitive status seniority are not only promotion and layoff but also transfer, demotion, rest days, shift assignments, p[r]erogative in scheduling vacation, . . . training opportunities . . . work conditions . . . [etc.] *Id.* at 766-67

It is clear, therefore, that the *Franks* court considered full retroactive seniority to be an appropriate remedy under Title VII. Indeed, the Court went so far as to conclude that the district Court “should take as [its] starting point the presumption in favor of rightful-place seniority relief.” *Id.* at n. 41.

The defendants contend that such a broad award of seniority is inappropriate in this case. They, in essence, argue that the Court has a great deal of discretion in awarding retroactive seniority and need not award all of the relief noted in *Franks*. While it is true that *Franks* did recognize that the relief awarded under Title VII is within the equitable and discretionary powers of the district court the leeway granted the Court in such a case is not broad. As the court stated in *Franks, supra*: *Albemarle Paper, supra*, at 416 made clear that discretion imports not the court’s “inclination, but . . . its principles.” Discretion is vested not for purposes of “limit[ing] appellate review of trial courts, or . . . invit [ing] inconsistency and caprice,” but rather to allow the most complete achievement of the objectives of Title VII that is attainable under the facts and circumstances of the specific case. 422 U.S. at 421. Accordingly, the District Court’s denial of any form of seniority remedy must be reviewed in terms of its effect on the attainment of the Act’s objectives under the circumstances presented by this record. *No less than with the denial of the remedy of backpay the denial of seniority relief to victims of illegal racial discrimination in hiring is permissible “only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination.”* *Ibid. Franks* at 769-770. (Emphasis added)

*5 . . .

Circumstances peculiar to the individual case may of course justify the modification or withholding of seniority relief for reasons that would not if applied generally undermine the purposes of Title VII. *Id.* at 779.

Here the Court is of the opinion that a failure to grant the requested relief would clearly undermine the “make-whole” purposes of Title VII. To deny the plaintiffs retroactive seniority for all purposes would clearly fail to remove the effects of discrimination and would not restore the plaintiffs to “a position where they would have been were it not for the unlawful discrimination.” Section-by-Section Analysis of H.R. 1746, accompanying the Equal Employment Opportunity Act of 1972–Conference Report, 118 Cong. Rec. 7166, 7168 (1972).

The defendants go on to argue that an award of competitive seniority¹ for all purposes would be inequitable because it would disadvantage males with established seniority rights. The defendants point out that such an award could lead to a situation where a woman with little experience could sit for a sergeant’s exam or could by the assertion of her seniority rights cause

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the demotion of an established male officer. While the thought of such occurrences is indeed distressing, the Supreme Court effectively disposed of this argument in *Franks*, stating:

[I]t is apparent that denial of seniority relief to identifiable victims of . . . discrimination on the sole ground that such relief diminishes the expectations of other, arguably innocent, employees would if applied generally frustrate the central “make whole” objectives of Title VII. . . . Accordingly, we find untenable the conclusion that this form of relief may be denied merely because the interests of other employees may thereby be affected. *Id.* at 774-75.

Any doubt as to the Court’s holding is removed by reference to the following language:

[Seniority] relief may not be denied on the abstract basis of adverse impact upon interests of other employees but rather only on the basis of unusual adverse impact arising from facts and circumstances that would not be generally found in Title VII cases. *Id.* at n. 41

Here the defendant has failed to establish that any *unusual* adverse impact would occur in this case that would not generally occur in Title VII cases. Accordingly, the Court holds that the plaintiffs are entitled to retroactive seniority for all purposes for which such seniority is used in determining a police officer’s entitlement to competitive and non-competitive benefits.

Although the decision in *Franks* compels a grant of retroactive competitive seniority in this case, the Court is not without power to ameliorate the adverse and possibly inequitable effects of granting retroactive competitive seniority to all members of the class. In *Teamsters v. United States*, [14 EPD P 7579] 97 S. Ct. 1843 (1977), the Court upheld a lower Court ruling that the defendant had discriminated on the basis of race in hiring line drivers. Essentially, the Government’s case showed that the defendant had hired members of the discriminatee class to fill lower paying jobs and had failed to hire them for the more desirable job of line driver. Although the Court limited the lower Court’s award of retroactive seniority to the effective date of Title VII it did not disturb the finding that retroactive seniority was an appropriate remedy for certain members of the class.

*6 The method with which the remedy was to be imposed, however, caused the Court problems. The District Court had held that members of the discriminatee class were to be offered the opportunity to fill line driver jobs, but this right was subject to the recall rights of laid-off line drivers. The Court of Appeals, however, held that this remedy was inadequate and ordered that class members be allowed to compete for vacancies with laid-off employees on the basis of the class members’ retroactive seniority. Although the Supreme Court refused to side with either the District Court or the Court of Appeals, it indicated that the decision was one to be controlled by equitable principles.

Although not directly controlled by the Act, the extent to which the legitimate expectations of non-victim employees should determine when victims are restored to their rightful place is limited by basic principles of equity. In devising and implementing remedies under Title VII, no less than in formulating any equitable decree, a court must draw on the “qualities of mercy and practicality [that] have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.” *Hecht Co. v. Bowles*, 321 U.S. 321, 329-330, 64 S. Ct. 587, 592, 88 L. Ed. 754. Cf. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 195-196, 61 S. Ct. 845, 852-853, 85 L. Ed. 1271, modifying and remanding *In re Phelps Dodge Corp.*, 19 N.L.R.B. 547, 600; *Franks, supra*, 424 U.S. at 798-799, 96 S. Ct. at 1280-1281. Especially when immediate implementation of an equitable remedy threatens to impinge upon the expectations of innocent parties, the courts must “look to the practical realities and necessities inescapably involved in reconciling competing interests,” in order to determine the “special blend of what is necessary, what is fair, and what is workable.” *Lemon v. Kurtzman*, 411 U.S. 192, 200, 201, 93 S. Ct. 1463, 1469, 36 L. Ed.2d 151 (opinion of Burger, C.J.) *Id.* at 1874-75

The Court went on to state:

Until . . . both the number of identifiable victims and the consequent extent of necessary relief have been determined it is not possible to evaluate abstract claims concerning the equitable balance that should be struck between the statutory rights of victims and the contractual rights of nonvictim employees. That determination is at best left, in the first instance, to the sound discretion of the trial court. *Id.* at 1875.

Due to the fact that the amount of seniority due to each class member has not been determined, this Court finds itself in a similar dilemma. It is impossible at this point to determine exactly what effect an immediate implementation of the award of retroactive competitive seniority would have on the rights of male policemen. Accordingly, the Court will not order the implementation of equitable relief with respect to competitive seniority until such time as a final award of seniority has been

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made to each class member and the Court has had the opportunity in further proceedings to determine the effect that the implementation of such relief will have on the nonvictim employees of the police force.² These further proceedings will necessarily consider such factors as the number of nonvictim employees affected, the alternative available to them and the economic characteristics of the industry. *Teamsters, supra* at n. 62.

*7 The Court feels that it is important to reiterate that this decision is not a denial of retroactive competitive seniority to members of the discriminatee class. To the contrary, the Court holds that such an award is appropriate in this case. The Court's only concern is that actual implementation of this remedy proceed so that the "make whole" purposes of the Act are fulfilled in such a way that the adverse effects on nonvictims is minimized. Clearly, the only way in which these dual goals can be accomplished is by a balancing of the rights of the discriminatees against the impact that the exercise of these rights will have on nonvictims. Therefore, until the exact amount of seniority to be awarded each class member is determined and the parties have had an opportunity to present their positions regarding the relative hardships imposed on victims and nonvictims, the Court will withhold its decision regarding the manner and time in which the award of retroactive competitive seniority will be implemented.

Finally, the defendant points out that all of the seniority benefits referred to in *Franks* are not available under the DPOA contract and asks that the Court limit its award of retroactive seniority to those seniority rights specified in the contract. It goes without saying that the Court's award of retroactive seniority in this case is limited to those rights and benefits which generally accrue to a police officer with seniority. If seniority rights in certain areas are not available to policemen, as a whole, an award of such rights would clearly be outside the scope of Title VII, since the plaintiffs would not now enjoy such rights even had they not been the victims of discrimination. The Court, however, will not limit the award to just those rights mentioned in the DPOA contract. It is clear that all of the rights which accrue to a policeman with seniority are not set forth in this contract. For example, the defendants' brief refers to various seniority requirements for taking the sergeants' exam. While it is clear that this is a benefit which accrues only to an officer with seniority, no mention of the right to take the exam is made in the contract. Accordingly, the Court holds that retroactive seniority is to be awarded for all purposes for which such seniority or length of service is currently used in determining a police officer's entitlement to competitive and noncompetitive benefits and not just those purposes set forth in the contract.

II. The Cutoff Date for Retroactive Seniority

The second issue presented by the plaintiff is whether the retroactive seniority awarded by the Court is limited to the effective date of the amendments to Title VII which made it applicable to public employers, that being March 24, 1972.

In *Teamsters v. United States*, [14 EPD P 7579] 79 S. Ct. 1843 (1977), the Supreme Court held that as applied to private employers Title VII did not permit an award of retroactive seniority to those persons who had suffered only pre-Act discrimination and that no person could be given seniority retroactive to a date earlier than the effective date of the Act (July 2, 1965).³ The plaintiffs contend that the decision in *Teamsters, supra*, is inapplicable to the case at bar and that the 1972 amendments should be applied retroactively. The plaintiffs' first argument is that the failure of Congress to reenact § 703(h) of Title VII at the time the 1972 amendments were passed evidenced a Congressional intent that these amendments have a retroactive effect. Section 703(h) provides:

*8 Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority . . . system provided that such differences are not the result of an intention to discriminate . . .

Based on the explicit language of § 706(h) and the legislative history surrounding its enactment the Supreme Court, in *Teamsters*, found that Congress intended to grant immunity to pre-act discrimination by private employers which manifested itself in otherwise bona fide seniority systems.

The plaintiff contends that the failure of Congress to reenact Section 703(h) at the time of the 1972 amendments evidences an intent on the part of Congress that these amendments should be applied retroactively. Furthermore, the plaintiff argues, the nonretroactive effect of Title VII as applied to private employers was based at least in part on the Congressional assumption that pre-Act discrimination by such employers was lawful. Such is not the case in the area of public employment where acts of discrimination were specifically outlawed by the 14th Amendment and 42 USC §§ 1981 and 1983 prior to the 1972 amendments. Thus, the plaintiff argues the 1972 amendments cannot be read as immunizing unlawful pre-Act discrimination

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by public employers from Title VII's scope.

Despite the persuasiveness of the plaintiff's argument, the Court is of the opinion that the 1972 amendments to Title VII are not to be given retroactive effect. Although the Court has found no cases treating the specific arguments advanced here, several Courts have held the 1972 amendments to Title VII to have only prospective effect in cases of sex discrimination. See *Scammel v. City of Dallas*, 565 F.2d 955 (5th Cir. 1978).

Furthermore, although the plaintiffs' argument that the 1972 amendments should apply retroactively because violations of these amendments were already proscribed by 42 USC § 1983 has some appeal, courts have refused to apply the 1972 amendments retroactively even in cases where there has been an alleged concurrent violation of 42 USC § 1981 or § 1983. See e.g. *Dawson v. Pastrick*, 441 F. Supp. 133 (D.C. Ind. 1977).

In addition, it appears that plaintiffs' contention is in direct opposition to the law of the Sixth Circuit as applied in this district. In *Place v. Weinberger*, [7 EPD P 9367] 497 F.2d 412 (6th Cir. 1974) cert. den. 419 U.S. 1040 (1974), the Court considered whether those provisions of the 1972 amendments which broadened Title VII's coverage to include federal employees were to be applied retroactively. The Court found that since Congress specifically provided that some sections of the 1972 amendments were to be applied retroactively, its failure to so provide with respect to the provision in question evinced a Congressional intent that that provision was to be of prospective effect only.

The decision in *Place, supra*, was applied by Judge Joiner of this Court in *Weldon v. Board of Education*, [11 EPD P 10,689] 403 F. Supp. 436 (E.D. Mich. 1975). In that case the plaintiff sued the defendant school board for violations of Title VII and 42 USC § 1981. In considering whether the 1972 amendments were to be given retroactive application the Court applied the rationale of *Place*, and held that since the provision of the 1972 amendments making Title VII applicable to school boards (42 USC 2000(e)) contained no express provision for retroactive application, no such application would be given.

*9 Here since the plaintiff relies on section 2000e-a, the same section considered in *Weldon*, to hold the defendants liable as public employers, the Court is of the opinion that it must follow the rationale of *Place, supra*, as applied in *Weldon*, and hold that the 1972 amendments to Title VII are not to be applied retroactively.

the plaintiffs' second argument for extending seniority relief beyond the limits of Title VII is that this Court has found violations of not only Title VII, but also of the 14th Amendment as enforced by 42 USC § 1983. Thus, argue the plaintiffs an award of retroactive seniority based on these non-Title VII violations would not be restricted to persons discriminated against subsequent to the effective dates of the 1972 amendments to Title VII.

Clearly any discrimination falling within the ambit of this Court's earlier rulings and occurring prior to the effective date of such amendments would violate the 14th amendment and 42 USC § 1983 and would be susceptible of a Court imposed remedy. Thus, there are two questions which must be answered. First, whether retroactive seniority is available as a remedy under 42 USC § 1983, and second, if so, whether it is an appropriate remedy in this particular case.

In response to the first question, the Court is of the opinion that such relief is available under 42 USC § 1983. As the Supreme Court stated in *Bell v. Hood*, 327 U.S. 678, 684 (1946):

[W]here federally protected rights have been invaded, it has been the rule from the beginning that Courts will be alert to adjust their remedies so as to grant the necessary relief.

Applying this rationale, the Court in *Gurmanken v. Costanzo*, 556 F.2d 184 (3rd Cir. 1977), held that a violation of § 1983 may be remedied by an award of retroactive seniority. In rejecting the argument that *Franks, supra*, limited the remedy of retroactive seniority to Title VII cases the Court held that "[t]here is no distinction in the law of equitable remedies between suits brought under Title VII and suits brought in reliance on 42 USC § 1983 or directly on the fourteenth amendment." *Id.* at 188.

This Court agrees with the decision in *Gurmanken*, and holds that retroactive seniority is an appropriate remedy for violations of 42 USC § 1983 and the fourteenth amendment.

In response to the second question, the Court is of the opinion that such relief is appropriate under the facts in this case. The fact that women who were discriminated against prior to the effective date of Title VII can only claim violations of 42 USC § 1983 makes them no less deserving of the equitable remedies provided by the Court. Since the Court has already held that

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women claiming under Title VII are to be awarded retroactive seniority, it would be anomalous to deny the same relief to those claiming under 42 USC § 1983.

Accordingly, the Court holds that those plaintiffs who have been discriminated against in violation of the 14th Amendment, as enforced by 42 USC § 1983, are not limited by the effective date of the 1972 Amendments to Title VII. Awards of retroactive seniority to such plaintiffs are, however, limited by the statute of limitations applicable to 42 USC § 1983. Since 42 USC § 1983 contains no statute of limitations, the Court must apply the most analogous state limitation period. *Madison v. Wood*, 410 F.2d 564 (6th Cir. 1969). The most appropriate Michigan statute in actions such as this is MSA § 27.605 which provides a three year limitation on actions for injury to persons and property. See *Madison, supra*. Therefore, since this action was commenced on April 10, 1973, the cutoff date for any award of retroactive seniority is April 10, 1970. As a result, members of the class suffering only pre-April 10, 1970 discrimination are without remedy and no plaintiff may receive an award of seniority retroactive to a date earlier than April 10, 1970.

***10** In summary, the Court holds as follows:

First, members of the discriminatee class are entitled to both benefit and competitive seniority for all purposes for which such seniority is used to determine the rights and privileges of police officers.

Second, the award of benefit seniority is to take place immediately upon a final determination regarding a class member's entitlement to retroactive seniority.

Third, the implementation of the award of competitive seniority shall not proceed until such time as there has been a final determination regarding the seniority rights of all class members and the Court has conducted proceedings consistent with this opinion to determine how such implementation shall proceed;

Fourth, awards of seniority are not restricted to the effective date of the 1972 amendments to Title VII; and

Fifth, awards of seniority may not be made retroactive to a date earlier than April 10, 1970.

An appropriate order shall be submitted.

Parallel Citations

17 Empl. Prac. Dec. P 8642

Footnotes

¹ "Competitive seniority" refers to the use of earned credits in determining an employee's right relative to other workers to job related rights that cannot be supplied equally to two employees and is distinguished from benefit "seniority" which determines an employee's level of fringe benefits. *Franks, supra* (Powell, J. concurring and dissenting).

² This holding in no way abrogates the Court's earlier award of retroactive seniority for layoff and recall purposes nor does it permit any delay in the award of benefit seniority to any member of the discriminatee class once a final award of seniority is made.

³ As originally enacted in 1965, Title VII did not apply to public employers.