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United States District Court for the Eastern District of Wisconsin

United States of America, Plaintiff,

v.

City of Milwaukee, a municipal corporation; Harold A. Breier, Chief of Police, City of Milwaukee Police Department; William Stamm, Chief, City of Milwaukee Fire Department; Marjorie L. Marshall, Charles W. Mentkowski, Richard Block, John Giacomo, and William I. Gore, Commissioners, City of Milwaukee Fire and Police Commission, Defendants.

Civ. A. No. 74-C-480

June 8, 1984.

[\*219] Joseph P. Stadtmueller, U.S. Atty. by Patricia J. Gorence, Asst. U.S. Atty., Milwaukee, Wis., and William Bradford Reynolds, Asst. Atty. Gen. by David L. Rose and Marybeth Martin, Attys., Dept. of Justice, Civil Rights Div., Washington, D.C., for plaintiff.

Grant F. Langley, City Atty. by Thomas E. Hayes, Reynold Scott Ritter, and Thomas C. Goeldner, Milwaukee, Wis., for defendants.

D. Jeffrey Hirschberg, Whyte & Hirschboeck, S.C., Milwaukee, Wis., for Milwaukee Police Ass'n.

#### DECISION AND ORDER

REYNOLDS, Chief Judge.

The United States and the defendants have moved the Court to enter a proposed consent order filed June 1, 1984. The proposed order is intended to resolve all claims raised in the United States' motions for supplemental relief filed September 3, 1982 and May 18, 1983.

A court will approve a consent order that has been negotiated between the federal government and a private defendant in a race discrimination case, unless the Court determines that the order is unconstitutional, unlawful, contrary to public policy, or unreasonable. *United States v. South Bend Community School Corp.*, 692 F.2d 623, 624, 628 (7th Cir.1982); *United States v. City of Miami*, 614 F.2d 1322, 1333 (5th Cir.1980). The Court has reviewed the proposed order and determines that it is constitutional, lawful, consistent with public policy, and reasonable.

Contemporaneous with this decision, the Court is also approving the consent order between the League of Martin and the defendants in Civil Action No. 81-C-1465. The order in that case is almost identical to the order approved here. Many differences are the consequence of stylistic preference, such as the insertion or deletion of commas, and do not alter the substance of the proposals. Other differences reflect an effort to ensure clarity, such as the insertion of the phrase "of the expiration of the dispute resolution period" between the words "fifteen (15) days" and "file with

the Court" in paragraph 11 of the order proposed in 74-C-480, which corresponds to paragraph 11 of the order proposed in 81-C-1465 .

The reasons for other discrepancies are not so obvious. In particular, paragraph 36 of the proposed order in 81-C-1465 and paragraph 33 of the order proposed in 74-C-480, which establish procedures for assignment to the Tac Squad in the context of individual relief, impose somewhat different obligations on the defendants. The order proposed in 74-C-480 provides that of the black officers recommended for Tac Squad assignment, "at least four" of the most qualified shall be assigned to Tac Squad vacancies "consistent with the needs of the MPD but in no event later than two years after entry of this Order." By contrast, the corresponding paragraph in the proposed order in 81-C-1465 provides that of the black officers recommended for Tac Squad assignment, "[t]here shall be a minimum of two (2) additional assignments of qualified black officers to the [Tac Squad] in each of the next two (2) years." Thus, the City could assign four black officers to the Tac Squad within a single year, and this would be consistent with the proposed consent order in 74-C-480, provided that the four officers in question were among the most qualified of those recommended, and provided that the assignments were made within two years of the entry of the order. Yet this would violate the order proposed in 81-C-1465 , because that order contemplates two assignments per year for each of the next two years. Conversely, the order in 74-C-480 permits an assignment procedure that is wholly consistent with the procedure proposed in 81-C-1465 . The point is therefore minor. It merits mention, however, because there is a possibility that the parties in both cases may have to work together to resolve problems of interpretation. The Court has no doubts that the parties are prepared to resolve any such difficulties through amicable, good-faith [\*220] negotiation pursuant to paragraph 48 of the order in 81-C-1465 and paragraph 43 of the order in 74-C-480.

Another difference between the two proposed orders pertains to issues of finance and compensation. Specifically, the order proposed in 81-C-1465 contains a provision that the City set aside a sum of money for monitoring selection procedures, while no corresponding provision appears in the proposed order in 74-C-480. Additionally, the proposed order in 81-C-1465 creates monetary relief pools for the positions of sergeant, detective, and lieutenant of detectives in paragraphs 25, 26, and 30, respectively, and a compensatory relief fund in paragraph 46. There are no corresponding provisions in the order proposed in 74-C-480. However, paragraph 45 of the order proposed in 74-C-480 adopts the monetary relief pools by reference, and therefore there is no possibility that the defendants will be exposed to competing obligations. Nor is it likely that the United States will challenge the establishment of an annual fund for monitoring selection procedures.

The remaining differences between the two orders are (1) the establishment of a procedure for promotion to exempt positions in paragraphs 31-33 of the order proposed in 81-C-1465 , which does not appear in 74-C-480; and (2) a provision in paragraph 47 of the order proposed in 81-C-1465 to the effect that the proposal does not purport to resolve claims of retaliation by certain named individuals, which does not appear in the order proposed in 74-C-480. Once again, the chances of a government challenge to either provision are nonexistent.

A summary of the history of this litigation and of the legal standards applicable to actions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and a discussion of the provisions that this proposed order shares with the order proposed in 81-C-1465 appear in the Court's decision in 81-C-1465 .

IT IS THEREFORE ORDERED that the proposed consent order appended to this decision is approved.

#### CONSENT ORDER

Plaintiff United States and defendants City of Milwaukee, et al, hereby agree to the entry of the following Consent Order in resolution of all issues raised by the United States' Motions for Supplemental Relief, filed September 3, 1982 and May 18, 1983, asserting discriminatory practices within the Milwaukee Police Department ("MPD") in the assignment, transfer and promotion of its sworn employees. From January 7, 1982 to April 6, 1984, this case was consolidated with a private class action, League of Martin v. City of Milwaukee, C.A. No. 81-C-1465 . Negotiations were conducted among all parties in the consolidated case and culminated in an agreement in principle among the parties. This agreement is embodied in a proposed consent order of January 25, 1984 in the League of Martin case,

to which the United States does not to object. This agreement is also embodied in this proposed consent order. Even though there are two orders, the parties agree that one set of procedures should be followed by both orders. This Order further resolves all issues between the United States and the City of Milwaukee with respect to allegations of discrimination in the MPD as to race in the assignment, transfer and promotion of its sworn employees which arose prior to the entry of this Order under the non-discrimination provisions of the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. sec. 1221 , et seq.

The parties, desiring to settle all issues raised by the motions for supplemental relief by appropriate Order, agree to the jurisdiction of this Court over the subject matter of these claims, and hereby waive, for purposes of the entry of this Order, a trial and the entry of findings of fact and conclusions of law. This Order, being entered with the consent of the defendants, shall not constitute an admission, adjudication or finding of discrimination, and the defendants expressly deny that any unlawful discrimination has occurred in the assignment, transfer or promotion of sworn employees of the MPD. The City and its officials, [\*221] sharing the objective of ensuring equal employment opportunity within the MPD, and desiring to avoid protracted and unnecessary litigation, accept this Order as final and binding among the parties signatory hereto and as to the matters resolved herein, subject to such modification as may be ordered by the Court.

IT IS THEREFORE ORDERED:

#### GENERAL PROVISIONS

1. The defendants, by and through their authorized officials, agents and employees acting within the scope of their employment, shall not engage in any act or practice which has the purpose or effect of unlawfully discriminating because of race against police officers in assignment, transfer and promotion within the MPD.
2. Further, the defendants shall not retaliate against any person in any manner because of that person's participation in or cooperation with this investigation, litigation or the administration of this Order. Remedial actions and practices required by the terms of this Order are in response to claims made and are consistent with the meaning of 42 U.S.C. sec. 2000e et seq., as amended.
3. The plaintiff and the defendants agree to defend the terms and conditions set forth in this Order against any challenge that the provisions thereof are unlawful. If any collateral lawsuit arises in connection with this Consent Order in state court, the defendants will remove, to the extent permitted by law, such action to the United States District Court for the Eastern District of Wisconsin. As soon as practicable, but in any event no later than ten (10) days after the defendants are notified of any challenge or a lawsuit, the defendants shall notify the plaintiff's counsel of the pendency of the lawsuit.
4. It is the purpose of this Order to ensure that blacks are considered for assignment, transfer and promotion on an equal basis with whites, that blacks are not disadvantaged by unlawful employment policies and practices, and that past disadvantages, if any, suffered by particular black officers are remedied as provided herein. Consistent with Paragraph 5 below, the defendants shall assign and promote qualified officers within the MPD in a non-discriminatory manner.
5. The parties fully understand and agree that the adoption and implementation of the provisions of this Order concerning promotion do not obligate the defendants to assign or promote any officer who is not qualified by valid qualification standards pursuant to the Uniform Guidelines on Employee Selection Procedures, 28 C.F.R. 50.14 , 29 C.F.R. 1607 and 31 C.F.R. 51.53 ("Uniform Guidelines"), or to grant a preference in assignments or promotions to any person except for those persons afforded specific relief for past practices as set forth herein at Paragraphs 23-35.

#### NONEXEMPT PROMOTIONS: PROCEDURES

6. The Fire and Police Commission ("FPC") shall refrain from using its current selection procedures for police sergeant

and detective. The FPC shall modify current components of its selection procedures or develop new components for police sergeant and detective in conformance with the Uniform Guidelines. In order to ensure these new selection procedures conform to the Uniform Guidelines, the defendants agree to retain a mutually agreed upon, impartial and professionally qualified outside testing expert, nominated by the FPC and approved by the plaintiff, who shall consult with the FPC in the design, development and administration of the new selection procedures for police sergeant and detective.

The plaintiff shall have the opportunity to meet with and question candidates for the position of Testing Expert as to each candidate's prior work experience and her or his proposed methodology regarding the consultation work desired herein, and her or his understanding and application of the Uniform Guidelines.

7. The expert may be dismissed by the FPC at any time upon notice to the plaintiff. [\*222] Upon any such dismissal, the defendants shall retain as a replacement a mutually-agreed upon, impartial and professionally-qualified outside testing expert nominated by the FPC and approved by the plaintiff.

8. The Testing Expert shall seek direction from, cooperate with and seek advice and assistance from the FPC with the view toward the design of selection procedures consistent with the requirements and standards of the Uniform Guidelines. The expert's mission shall be to develop, in conjunction with the FPC, modified or newly-developed selection procedures which, consistent with the Uniform Guidelines, validly predict successful job performance and which eliminate or minimize adverse impact.

9. The expert shall submit three (3) aspects of a selection procedure, namely, the job analysis, test development and test administration, to the FPC for its approval. Upon approval of the FPC of any such aspect, the FPC shall notify and simultaneously make available to plaintiff's counsel under appropriate protective orders the results of that aspect together with all information available indicating the manner in which the expert prepared the procedure.

10. For the police sergeant and detective positions, the modification of current selection procedure components or development of new components shall be based upon new job analyses conducted in accordance with the Uniform Guidelines, which shall include direct observation of job task performance, employee interviews and recommendations as to years of service requirements.

11. Should plaintiff dispute the conformance of any job analysis to the Uniform Guidelines, plaintiff shall submit written notice specifying areas of dispute to the City Attorney within twenty (20) days of the receipt of notice of FPC approval of the job analysis. The parties shall then have twenty (20) days, unless extended by agreement of the parties, to meet and resolve the dispute. If the dispute is not resolved, the plaintiff shall within fifteen (15) days of the expiration of the dispute resolution period file with the Court a notice with specifications as to objections and the unsuccessful negotiations, requesting the dispute be resolved by the Special Master. In any such hearing before the Special Master, plaintiff shall have the burden of going forward to establish that the challenged job analysis does not conform to the Uniform Guidelines.

12. With the exception of objections raised due to changed circumstances, plaintiff agrees not to challenge the job analysis after the expiration of any time period set forth in the above paragraph or after resolution by the Special Master of any dispute as set forth in Paragraph 11. If a job analysis is not challenged, or if a challenge to the job analysis is resolved by the decision of the Special Master, the job analysis shall not be challenged by plaintiff as to conformance with the Uniform Guidelines in subsequent examinations wherein the City has not altered the applicable job position.

13. As to the test development aspect, should plaintiff dispute any test item as to readability under professionally-recognized standards, or the conformance of written test or assessment center items, or the intended use of other examination components to the job analysis under professionally-recognized standards and the Uniform Guidelines, plaintiff shall submit written notice specifying areas of dispute to the City Attorney within twenty (20) days of the receipt of notice of FPC approval of test development. The parties shall have twenty (20) days, unless extended by agreement of the parties, to meet and resolve the dispute. If the dispute is not resolved, the plaintiff shall within

fifteen (15) days of the expiration of the dispute resolution period file with the Court a notice, with specifications as to objections on these grounds and the unsuccessful negotiations, requesting the dispute be resolved by the Special Master. In any such hearing before the Special Master, plaintiff shall have the burden of going forward to establish that the challenged [\*223] test development does not conform to standards of the Uniform Guidelines.

14. With the exception of objections raised due to changed circumstances, plaintiff agrees not to challenge the test development as to readability or conformance of written test or assessment center items, or the intended use of other examination components to the job analysis after the expiration of any time period set forth in Paragraph 13 above or after resolution by the Special Master of any dispute as set forth in Paragraph 13. If the test development is not challenged as to readability or conformance of written test or assessment center items, or as to the intended use of other examination components to the job analysis, or if such a challenge is resolved by decision of the Special Master, plaintiff agrees not to challenge those items or components in subsequent examinations in which the applicable job position has not been altered.

15. For the new police sergeant and detective selection procedures, the FPC shall estimate the number of vacancies to be filled from the resulting eligibility lists. In the event it appears from the FPC projections that the administration of a new selection procedure for either police sergeant or detective would result in adverse impact on black applicants, the expert shall, consistent with the requirements of Paragraph 8 above to conform said selection procedure to the Uniform Guidelines, make recommendations to the FPC as to minimizing or eliminating adverse impact by implementing changes to the proposed procedure which may include, but are not limited to: changes in previously-noticed component weights, the elimination of individual written test questions, a change in the pass/fail point of the written test, a change in the written test from a ranking device to a pass/fail use, the extension or reduction of the eligibility list lifetime to ensure a certain number of appointments, or the use of a banding or grouping methodology rather than ranking in strict numerical order or other recognized psychometric techniques.

16. In the event that a police sergeant or detective examination procedure does not from the FPC projections result in adverse impact through the use of changes listed in Paragraph 15 or other acceptable changes, plaintiff agrees it will not, on behalf of the black class, challenge the administration of the new selection procedures in the absence of intentional discrimination.

17. In the event it appears from the FPC's projections that the examination procedure will result in adverse impact and 1) the FPC fully conforms to the expert's recommendations as to the use of the procedure to minimize or eliminate adverse impact and 2) the expert, using professionally-accepted techniques, conforms to the Uniform Guidelines' requirements with respect to producing evidence of validity and seeking alternative procedures which retain validity and minimize or eliminate adverse impact (see Uniform Guidelines, Section 3B), plaintiff agrees it will not, on behalf of the black class, challenge the administration of the modified or newly-developed selection procedure. In no event shall plaintiff at this time challenge the job analysis or test development aspects of the selection procedure.

18. Plaintiff agrees that, notwithstanding the provisions of Paragraph 25 of this order pertaining to the use of existing selection procedures, no challenge will be made to any future selection procedure developed by the FPC on the ground that an addition of a constant which reflects the difference in group mean scores in any component of a higher scoring group to the scores of a lower scoring group so as to eliminate adverse impact, was not used.

19. In the event that the FPC does not fully conform to the expert's recommendations as to minimizing Or eliminating adverse impact or the expert does not produce validity evidence which conforms to the Uniform Guidelines as to minimizing or eliminating adverse impact, the above provisions for the twenty (20) day dispute notice, twenty (20) day dispute resolution and fifteen (15) day Court filing shall apply. [\*224] Plaintiff may only challenge the test administration on these grounds within these time limits. Any party may file timely objections to the decision of the Special Master with the United States District Court pursuant to Rule 53, F.R.Civ.P. In the event that the FPC fully conforms to the expert's recommendation as to minimizing or eliminating adverse impact but plaintiff challenges before the Special Master the conformance of the expert's recommendations to the Uniform Guidelines, plaintiff must establish that the expert's consideration of alternatives was not reasonable, as defined by Section 3B of the Uniform

Guidelines.

20. After the next lieutenant of detective eligibility list has been compiled but prior to its being published, the FPC shall make available to plaintiff the list, the projected number of selections to be made from it, and the composite scores and individual component scores of each applicant by race, sex and national origin. Within twenty (20) days of receiving that information from the FPC, plaintiff shall make a preliminary determination as to the adverse impact in the selection of applicants from the list. If on this basis, the plaintiff files written objection with the Court, the defendants will not make any appointments from its proposed eligibility list until such time as the parties or the Special Master, in dispute resolution proceedings under the twenty (20) day dispute notice, twenty (20) day dispute resolution and fifteen (15) day Court filing time limits set forth in Paragraphs 11, 13 and 19, determine that the FPC has complied with the Uniform Guidelines. Except insofar as the FPC has incorrectly projected the number of appointments, plaintiff agrees not to challenge the selection procedures on behalf of the black class after the expiration of the above time limits. Should the actual number of appointments result in adverse impact, plaintiff is not bound by these time limits.

21. During any challenge to the job analysis, test development, test administration or eligibility list, there shall be no implementation of this aspect of the selection procedure until the dispute is resolved.

22. Plaintiff shall bear the costs of monitoring of selection procedure aspects of this Order.

#### NONEXEMPT PROMOTIONS: INDIVIDUAL RELIEF

23. The parties recognize that numerous black officers took the police sergeant and detective examinations and were not promoted. Without being able to determine which of those officers would have been promoted, the parties agree to the following relief.

#### Sergeant

24. The parties agree that Police Officer Verbie Swanigan, who filed EEOC Charge # 055771635, and who took and passed the examination for police sergeant in 1981 shall be appointed to the next police sergeant vacancy prior to the establishment of the next police sergeant eligibility list. Officer Swanigan shall receive backpay and seniority as a sergeant retroactive to November 7, 1982. Backpay shall equal the difference between the maximum pay of a police officer and the starting pay for a police sergeant. Upon accepting this relief, Officer Swanigan must sign a release of any and all claims against the defendants based upon race discrimination.

25. The parties recognize that certain black officers took and failed the 1977 and 1981 written test for police sergeant and thus did not compete in the other components of the selection procedures. Those officers shall constitute a police sergeant consent order pool.

(a) Subject to the availability of qualified black officers in the police sergeant Consent Order pool, the first two (2) appointments shall be made in the following manner: No black officer shall be considered under this subparagraph who would not, without the addition of a constant which reflects the difference in the mean scores on the 1981 police sergeant written test of white police officers and black police officers, have passed the 1981 test. Those [\*225] black officers who may be considered under this subparagraph and are still available for appointments to police sergeant shall take a special assessment center exercise administered by the FPC. From among those black officers who successfully complete the special assessment center exercise, the FPC shall select up to two (2) officers who shall be appointed to the next police sergeant vacancies prior to the establishment of any future police sergeant eligibility list.

(b) In order to make a third appointment from the remaining officers in the police sergeant consent order pool, the FPC shall administer the new nondiscriminatory selection procedure for police sergeant to the officers in the consent order pool. The black officer from this pool whose composite score is highest among those who pass and qualify under the new procedure and who is available shall receive the next appointment to police sergeant. After that

appointment, the eligibility list resulting from the nondiscriminatory procedure shall be followed.

(c) In the event the procedure under subparagraph (a) does not result in two (2) black police officers available for promotion to sergeant, then the additional sergeant appointment(s) shall be made pursuant to subparagraph (b).

The three (3) officers appointed pursuant to this paragraph shall receive seniority as a sergeant retroactive to November 7, 1982. Officers provided relief under this paragraph must sign a release of any and all claims against the defendants based upon race discrimination.

#### Detective

26. The defendants shall appoint five (5) black police officers from the 1981 detective eligibility list prior to the establishment of the next detective eligibility list. The five (5) officers to be appointed are those ranking highest on the 1981 eligibility list who were then, and at the time of the vacancies, available for appointment.

The five (5) officers appointed pursuant to this paragraph shall receive seniority as a detective retroactive to January 1, 1983. The five (5) black police officers provided relief under this paragraph must sign a release of any and all claims against the defendants based upon race discrimination.

#### Lieutenant of Police

27. The FPC shall extend the current lieutenant of police eligibility list, if necessary, to ensure appointment through # 8 on that list.

#### Lieutenant of Detectives

28. The parties agree that Darrel Rodgers, highest ranking black detective who was not promoted on the 1980 Lieutenant of Detective eligible list, shall be appointed to the next Lieutenant of Detectives vacancy prior to the establishment of a new eligible list.

29. The parties recognize that Arthur Jones on February 17, 1976, filed EEOC Charge # TMK6-1169 as amended on May 19, 1976, alleging discrimination in assignment and promotion, and the parties further recognize that, after investigation, the EEOC found and determined there was reasonable cause to believe discrimination has occurred. The defendants, without admitting discrimination but desiring to resolve those outstanding charges, agree Arthur Jones shall, provided he passes all components of the next Lieutenant of Detectives examination, be appointed to the next Lieutenant of Detective vacancy. Upon appointment as Lieutenant of Detectives, Arthur Jones shall receive backpay and seniority as a Lieutenant of Detectives retroactive to August 17, 1982. Backpay shall be calculated based upon the difference between the maximum pay for a detective and the starting pay for a Lieutenant of Detectives.

In the event that Arthur Jones does not pass a component of the next Lieutenant of Detectives examination, thereby not qualifying for promotion, Johnnie L. Smith, if "available for promotion, shall be promoted to the next Lieutenant of Detectives vacancy.

30. The three (3) detectives provided relief under Paragraph 29 must sign a release [\*226] of any and all claims against the defendants based upon race discrimination.

### DEPARTMENTAL ASSIGNMENTS

#### Tactical Enforcement Unit

31. All officers seeking assignment to the Tactical Enforcement Unit ("T.E.U.") shall hereafter apply to their District Commander in writing. Any such request by an individual officer shall be limited to one (1) application per one-year period.

Officers shall be considered for assignment to the T.E.U. based upon their interest in and qualification for such

assignment, as determined by the recommendation of their commanding officer. In evaluating each applicant, the commanding officer shall prepare T.E.U. screening form setting forth the basis for her or his recommendations. All such forms shall be retained by the MPD for two (2) years. Any officer recommended for such assignment shall be placed in a pool of qualified officers, and shall continue to be eligible for assignment to the T.E.U. for a period of two (2) years without the need for submitting a new application.

32. Those officers who qualify for assignment to the T.E.U. by virtue of the recommendation of their commanding officer shall be further evaluated for assignment by the T.E.U. in accordance with criteria approved by the Chief of Police.

33. With respect to individual relief, within twenty (20) days of the entry of this Order, the MPD shall notify all black officers with MPD service dates of January 1, 1980, or earlier and inform them in writing of their opportunity within thirty (30) days to be considered for immediate assignment to the T.E.U. As to those black officers who respond by submitting timely applications, their commanding officers shall within ten (10) days complete the T.E.U. screening form to establish the officers' qualifications for assignment. Black officers so recommended shall be placed in a pool of qualified applicants. Of those black officers most qualified from among those recommended under this paragraph for T.E.U. assignment, two shall be assigned to fill the next two (2) vacancies in the T.E.U., and at least four (4) others shall be assigned to T.E.U. vacancies consistent with the needs of the MPD but in no event later than two years after entry of this Order.

Thereafter during the life of this Consent Order, there shall be assigned to the T.E.U. annually qualified black police officers to fill T.E.U. vacancies in numbers approximating their interest in and ability to qualify for such assignments. The balance of those black officers recommended for T.E.U. assignment shall be subject to the two-year application renewal requirement as set forth in Paragraph 31 above.

#### Geographic Police Districts

34. The parties agree that black officers shall hereafter be assigned to the Second and Sixth Districts of the MPD. A minimum of two (2) black officers shall be immediately transferred to each of said districts, and assigned to the same shift. Only volunteers will be considered for transfer in order to meet this requirement. However, the Chief of Police shall not be obligated to transfer any such volunteers in meeting this requirement. In addition, a minimum of four (4) black officers shall be assigned to each of the said districts and assigned to the same shift within approximately one (1) year of the entry of this Order.

Other than the assignments agreed to herein, the Chief of Police shall maintain discretion in making assignments to the Second and Sixth Districts.

#### Bureaus

35. The parties agree that a qualified black shall be assigned or appointed to the next vacant police officer, sergeant or detective position in each of the following bureaus within the MPD: Administration Bureau, Bureau of Identification, Vehicle Service Bureau, Communications Bureau, and the Police Academy. With respect to the position at the Police Academy, said position shall be in an instructional capacity.

#### [\*227] APPLICATION/POSTING

36. With respect to all police officer assignments to the Youth Aide Bureau, the Sexual Assault Unit of the Vice Squad, the Warrant Squad, the Senior Citizen Assault Unit, Tactical Enforcement Unit, and those bureaus included in the DEPARTMENTAL ASSIGNMENTS, Bureaus section of this proposal, the Chief of Police shall by order or memorandum state whether interest in the assignment is one of the criteria and shall further state how officers may express their interest in the assignment. In addition, the Chief of Police shall by order or memorandum state all criteria, including but not limited to, investigative ability, departmental activity, report writing, or demonstrated initiative, that are actually utilized in the selection of an officer for an assignment. No other criteria shall be considered.



The parties recognize that in certain circumstances officers on limited duty status will be given the assignments listed above without regard to the criteria indicated above.

37. As vacancies arise for police officers in the bureaus and units cited in Paragraph 36 above, the MPD shall post at bureaus and districts notice of said vacancies.

38. The Chief of Police shall review the criteria for the special district assignments under the control of the district commanders, and shall by order state which of the criteria mentioned above are to be considered by the district commanders in making such assignment. No other criteria shall be considered.

All district special assignments shall be reviewed by the district commander at least once every three (3) months. No such assignment shall be continued beyond the three (3) month period absent special individual circumstances which would suggest that such assignment should continue for a longer period.

#### RECORDKEEPING AND REPORTING

39. The defendants shall retain for a period of five (5) years all records relating to the assignment and promotion of officers covered by this Order, including district daily duty rosters, job announcement bulletin, applications, evaluations, eligibility lists, rankings and scores on components of assignment and promotion procedures, and criteria for assignment and promotion. Counsel for plaintiff United States shall have the right to inspect any and all such documents upon reasonable notice to the City Attorney without further order of this Court. In addition, the defendants shall make available to plaintiffs counsel such information or records as plaintiff requests in writing, provided such requests shall not be unduly burdensome.

The defendants shall also make available to plaintiffs counsel copies of all Chief disciplinary departmental orders respecting suspension, demotion or dismissal, and as to those officers, indicate race, sex and national origin.

40. For purposes of this Order, reporting periods shall run from January 1 through June 30 and from July 1 through December 31 for each year. With the exception of the information specifically provided pursuant to Paragraph 9 above, within thirty (30) days after the close of each reporting period, the City shall provide counsel for the United States:

(a) The number of officers by race, sex and national origin, applying for (1) all promotional positions, indicating the position sought, and (2) assignments to those bureaus and units covered by Paragraphs 31, 32, 33 and 35 of this Order during the reporting period.

(b) Copies of each eligibility list established for all promotional positions during the reporting period, with officers identified by race, sex and national origin.

(c) A listing of all officers, by race, sex and national origin, who passed or failed "each segment of the selection procedure for all promotional positions, indicating each officer's score or ranking on each segment, with officers identified by race, sex and national origin.

[\*228] (d) The number of officers by race, sex and national origin (1) appointed to each promotional position, (2) assigned to each bureau and unit in Paragraphs 31, 32, 33, and 35, and (3) assigned to each of the police geographic districts for the reporting period.

(e) The total number of persons, by race, sex and national origin, in (1) the entry level and each promotional position within the MPD's sworn ranks, and (2) each geographic district and bureau or unit in Paragraphs 31, 32, 33 and 35 as of the close of the reporting period.

(f) The number of terminations by race, sex and national origin, indicating whether each termination was voluntary or involuntary.

41. The City shall also provide to the United States within forty-five (45) days of the entry of this Order, a report showing the number of officers, by race, sex and national origin, (1) in the entry level and each promotional position, (2) in each bureau or unit in Paragraphs 31, 32, 33 and 35, and (3) in each geographic police district as of the date of the entry of this Order.

42. The recordkeeping and reporting requirements under this Order supersede all recordkeeping and reporting requirements heretofore provided under Civil Action File No. 74-C-480 or under agreement with the Office of Revenue Sharing.

#### MISCELLANEOUS

43. The parties shall resolve disputes arising under this Consent Order among themselves. Any party seeking a resolution of any issue shall extend a proposal for such resolution to the other party. If a resolution has not been reached within forty-five (45) days, any party may petition the Court for appropriate relief. The parties agree that for any disputes arising under Paragraphs 1, 4, and 5 above which cannot be resolved among the parties, the party petitioning the Court shall proceed by a motion for supplemental relief.

44. This Court shall retain jurisdiction of the matters covered by this Order for a period of five (5) years from the date of entry for such further action as may be necessary or appropriate to effectuate the purposes of this Consent Order. At the end of five (5) years, this Order shall dissolve, provided that plaintiffs may move to oppose dissolution of the Order, in whole or in part, for good cause shown, including consideration of the degree to which the objectives of the Order have been achieved.

45. In the event the Court approves the proposed consent order in the League of Martin case, C.A. No. 81-C-1465, consolidated with this case from January 7, 1983 to April 4, 1984, the monetary relief provisions of Paragraphs 25, 26, 29 and 46 and Appendix A of that order (Appendix A is attached as Exhibit A hereto) shall resolve the monetary claims raised by the United States' motions for supplemental relief.

#### EXHIBIT A

#### APPENDIX A

#### Compensatory Distribution

There shall be three (3) schedules established among which the compensatory fund shall be distributed. Class members shall be placed on these schedules if they meet the definitions set forth below. A class member may be eligible for inclusion in more than one (1) schedule and may claim shares from every schedule for which she or he qualified.

Each class member who wishes to participate in the compensatory distribution shall be required to complete and submit a claim form no later than a date sixty (60) days following the approval of this Order. Failure to comply with this requirement shall constitute a waiver and relinquishment of any and all claims for compensatory relief on the basis of the allegations of the complaint in this case.

#### Residual Fund

The residual fund is the amount of money remaining in the fund after all fixed shares have been distributed. It is further anticipated that all administrative costs associated with distribution of the residual [\*229] fund shall be deducted from the residual fund before said fund is distributed to class members. Administrative costs shall be actual costs to administer the fund, but in no event shall exceed four (4%) per cent of the residual fund.

Schedule I (Named Plaintiffs)

The originally-named plaintiffs in Civil Action File 81-C-1465 whose activity fostered prosecution in this action and who alleged racial discrimination shall each receive a fixed share of Two Thousand (\$2,000) Dollars.

Arthur Jones

Bobbie Durrah

Lenard Wells

Ronnie Horton

Brian Suttle

Dorothy Downing

Schedule II (Individual Claims)

A. Retaliatory Transfers. The following officers shall receive fixed shares in settlement of their claims as compensatory non-punitive damages for injuries involving their involuntary transfers in November, 1981, which were the subject of the May, 1982 preliminary injunctive decision by the Court.

Bobbie Durrah	\$4,000
Lenard Wells	\$4,000
Ronnie Horton	\$4,000
Brian Suttle	\$4,000
Lawrence Morris	\$4,000
Arthur Jones	\$2,000
Philip Parker	\$1,000
Isaac Sawyer	\$1,000

B. A fixed share of Five Thousand (\$5,000) Dollars to Earl Marshall in settlement of his outstanding EEOC charge and claim for compensatory non-punitive damages.

C. In the event that Arthur Jones does not pass the next Lieutenant of Detectives examination, he shall be entitled to receive, as a fixed share, the amount set forth in Paragraph 30 of this Order. Said amount, upon transfer to this fund, shall constitute compensatory, non-punitive damages for personal injuries with respect to the facts set forth in his EEOC charges.

#### Schedule III (Promotion/Assignment Class Claims)

After the fixed shares in Schedules I and II above have been paid (with the exception of Arthur Jones' contingent interest), the residual fund remains. Each member of the plaintiff class who, as of November 19, 1975, was employed by the MPD as an officer shall be entitled to claim shares of the residual fund on the following basis:

One (1) unit of the fund for each year of service with the MPD up to a maximum of fifteen (15) units.

The residual fund will be divided into units. The value of each unit shall be determined by the value of the fund. These sums shall be distributed to class members in settlement of their claims for compensatory, non-punitive damages.