

1997 WL 1911226

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United States District Court, E.D. Wisconsin.

UNITED STATES OF AMERICA, Plaintiff,

v.

CITY OF MILWAUKEE; 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.

No. Civ.A. 74-C-480. | July 29, 1997.

Attorneys and Law Firms

Marybeth Martin, Robert S. Libman, Allen W. Levy, U.S. Department of Justice, Civil Rights Division, Employment Litigation Section, Washington, D.C., for Plaintiff.

Grant F. Langley, City Attorney, Thomas E. Hayes, Bruce D. Schrimpf, Melanie R. Swank, Tracy M. Johnson, Assistant City Attorneys, Milwaukee, WI, for Deft.

Kimberly Sutherland, Chicago, IL, for Proposed Intervenor Culver.

Peter Guyon Earle, Boynton & Earle, Milwaukee, WI, Anna Maria Berrios, Berrios, Detoro & Egyes, Milwaukee, WI, for Proposed Intervenor Lpoa.

Opinion

TEMPORARY ORDER OF JULY 29, 1997 MODIFYING OLD HIRING ORDERS OF JULY 25, 1975, OCTOBER 9, 1975, AND SEPTEMBER 16, 1976

REYNOLDS, J.

*1 The United States of America commenced this action in 1974, alleging that the defendants engaged in discriminatory policies and practices against African-Americans and women with respect to recruitment, hiring, and promotion for the Milwaukee Police Department ("MPD"). On July 25, 1975, October 9, 1975, and September 16, 1976, this court entered orders regarding

the defendants' employment practices ("Old Hiring Orders"), which orders essentially established hiring objectives for minorities and women. The Old Hiring Orders provided that they would remain in effect until further order of the court. On June 8, 1984, this court approved a consent order which also dealt with the defendants' employment practices. The consent order dissolved in 1989 by its terms (as amended by June 20, 1989 order).

The United States and defendant City of Milwaukee agree that the Old Hiring Orders should be modified; each has filed a motion to modify the Old Hiring Orders and each has submitted proposed new orders which are pending. Separate motions to intervene are also pending.¹ On July 22, 1997, the United States and the City of Milwaukee filed a joint motion for a temporary order pending the court's ruling on the motions to modify the Old Hiring Orders. With their motion, the parties have included a proposed temporary order.

There have been significant changes in relevant case law since the Old Hiring Orders were entered, e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1988). The parties state that the Old Hiring Orders must be modified to comply with current law, and that the temporary order is necessary to avert a shortage of police officers within the MPD. The affidavit of Arthur Jones, Chief of Police of the MPD, is submitted in support of the joint motion for a temporary order. Chief Jones attests that the MPD must immediately begin the hiring process to avoid numerous vacancies of police officer positions for the MPD. (July 22, 1997 Jones Aff. ¶¶ 5, 7-9.) The court finds that the parties have made a sufficient showing of urgency to permit entry of the proposed temporary order.

Accordingly, plaintiff United States of America and defendant City of Milwaukee's July 22, 1997 joint motion for a temporary order pending the court's ruling on the motions to modify the Old Hiring Orders is GRANTED. The terms of the temporary order are as follows:

1. This court's July 25, 1975 Interim Order, as amended by the court's October 9, 1975 Order which provided, *inter alia*, "that in filling current and future vacancies in the positions of police aide and patrol [police] officer [in the MPD], the Milwaukee Fire and Police Commission shall appoint two black, Latin and American Indian applicants for every three white applicants appointed," is VACATED.

2. This court's September 16, 1976 Order, which provided, *inter alia*, that when "filling current and future vacancies in the positions of police aide and patrol

[police] officer [in the MPD], the Milwaukee Fire and Police Commission shall adopt and seek to achieve the goal of appointing at least one female applicant for every four male applicants appointed,” is VACATED.

*2 3. The defendants shall be allowed to hire police aides and police officers for a recruit class to begin in November 1997. The defendants shall be allowed to hire from currently existing eligibility lists to fill this class. However, such class must be filled in a manner that does not have adverse impact against individuals based on race, national origin, or gender.

4. The November 1997 class shall be comprised of Caucasians, African-Americans, Hispanics, and
City of Milwaukee

American Indians in a manner which reflects their approximate proportions in the relevant civilian labor force. Each group shall be proportionately represented based upon the 1990 United States Census Report, at the midpoint between the City of Milwaukee and the Primary Metropolitan Statistical Area (“PMSA”) civilian labor force of individuals between the ages of 29–39, with a high school diploma or its equivalent. The appropriate range per group, according to the 1990 United States Census Report is:

PMSA

Caucasian	66.63%	Caucasian	83.58%
African-American	26.70%	African-American	12.21%
Hispanic	4.93%	Hispanic	3.05%
American Indian	0.93%	American Indian	0.60%

5. Women shall be represented in the November 1997 recruit class at a range between their estimated labor market availability for law enforcement jobs and their actual applicant flow for the position of police aide or police officer, or between 14% and 17%.

6. After the November 1997 recruit class, all existing eligibility lists shall be rescinded pursuant to Milwaukee Fire and Police Commission rules.

7. Thereafter and until the court rules on the parties’ motions to modify hiring orders, filed on September 26, 1996, by the United States and on October 28, 1996, by the City of Milwaukee, the defendants shall be permitted to select and appoint police aides and police officers provided that such appointments comply with applicable

law, including Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* If the defendants cannot demonstrate that the written examination or physical abilities examination components of the selection procedure utilized during this interim period are job-related and consistent with business necessity, those components of the selection procedure must be utilized in a manner that has no adverse impact against individuals based on race, national origin, or gender.

8. More specifically, if the defendants cannot demonstrate that the written examination or the physical abilities examination components of the selection procedure utilized during this interim period are job-related and consistent with business necessity, then the defendants shall make decisions such that the proportion of each racial, ethnic, and gender group among all individuals

selected through the use of those components reflect the proportion of each racial, ethnic, and gender group among all those individuals who participated in that component of the selection process.

*3 9. During the life of this temporary order, the defendants shall provide written notice to the United States of the number, names, race, national origin, and gender of all individuals whom the defendants propose to appoint to the positions of police aide and police officer. The defendants shall provide such advance notice to the United States at a time so as to afford the United States an opportunity to object to such appointments and for the United States and the defendants to resolve the matter, or submit the matter to the court for resolution, prior to any such provisional or permanent appointment; however, in any event, this notice shall be provided to the United States at least twenty (20) days prior to any such provisional or permanent appointment.

10. The defendants shall reassess the present recruitment program and shall ensure that all necessary affirmative steps are taken to inform minorities and women of opportunities for police aide and police officer positions with the MPD. The recruitment program shall include maintaining contacts with area high schools, technical and vocational schools, colleges, and organizations which have traditionally expressed an interest in providing information to minority or female applicants or which indicate such interest in the future. In addition, where appropriate, advertising of employment opportunities shall be placed on radio stations and other mass media primarily directed at minority and female audiences for

the purpose of emphasizing the availability to these individuals of police aide and police officer positions in the MPD. It is understood that the present recruiting area is the Milwaukee PMSA, and such schools, organizations and media utilized shall be geared to reach all potentially interested minority and female applicants within the PMSA.

11. The defendants shall provide assistance in the form of study guides, and/or other appropriate means to be agreed upon by the United States and the defendants, to applicants for the positions of police aide and police officer in the MPD to prepare applicants for all components of the selection procedures, including both written and physical abilities examinations. The defendants shall provide sufficient information on examination content at least one (1) month in advance of the expected examination date to provide concerned organizations an opportunity to develop and implement an adequate training program. All information regarding the defendants' study guides or other assistance to applicants shall be provided to the United States immediately upon development, and the defendants shall consult with the United States regarding the success of these study guides or other assistance to applicants. In addition, the defendants shall implement further examination preparation study guides or other assistance to applicants as ordered by this court. The United States shall maintain the confidentiality of all of the materials forwarded to it by the City of Milwaukee.

Footnotes

¹ Two parties have moved to intervene in this action, which motions are denied without prejudice by separate order on today's date.