

RESOLUTION No. 36-2007

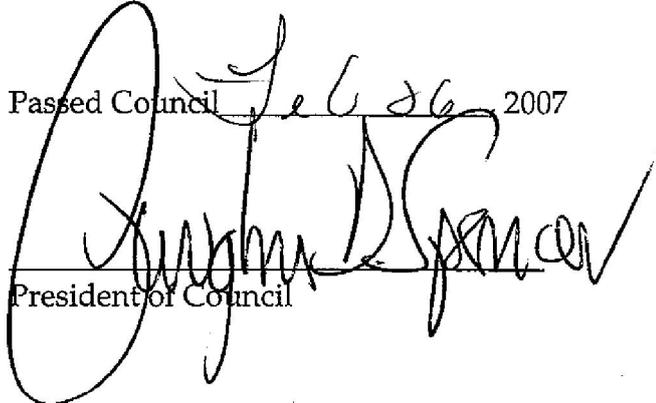
Whereas, the City of Reading through its attorney, Steven K. Ludwig, Esq., entered into negotiations with counsel for plaintiffs Courtney Horne, et al, for resolution of a certain federal civil action (05-CV-6334) in U.S. District Court Eastern Division PA; and

Whereas, said negotiations have resulted in a certain Agreement (attached as Exhibit A) and designated as a Consent Decree; now, therefore,

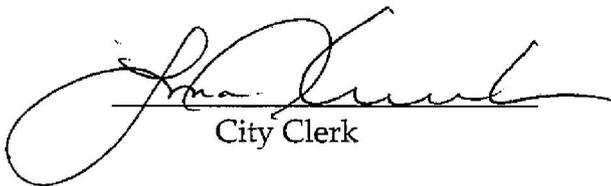
The Council of the City of Reading hereby resolves as follows:

That the Agreement/Consent Decree is approved and that Mayor Thomas M. McMahon execute said Agreement/Consent Decree (attached as Exhibit A) on behalf of the City of Reading.

Passed Council Feb 26 2007


President of Council

Attest:


City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Resolution passed by the Council of the City of Reading, on the 26th day of Feb A. D. 20 07. Witness my hand and seal of the said City this 23rd day of Feb, A. D. 20 07.


CITY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

READING BRANCH, NATIONAL	:	
ASSOCIATION FOR THE ADVANCEMENT	:	
OF COLORED PEOPLE, the NATIONAL	:	
ASSOCIATION FOR THE ADVANCEMENT	:	Civil Action No. 05-6334-JS
OF COLORED PEOPLE, and CORTNEY	:	
HORNE, on behalf of himself and all others	:	
similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CITY OF READING,	:	
	:	
Defendant.	:	

CONSENT DECREE

WHEREAS, Plaintiffs NAACP – on behalf of itself and its Reading Branch office – and Courtney Horne (“Plaintiffs”) have commenced the above-captioned action, which alleges that Defendant City of Reading (“City”) has implemented and maintained Fire Department recruitment, application, and hiring practices that have an adverse impact on African-American and other minority Fire Department applicants and prospective applicants in violation of the Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-1, *et seq.* (“Title VII”); and

WHEREAS, throughout the above-captioned litigation, the City consistently has denied liability under Title VII or any other anti-discrimination statute and has steadfastly asserted that its Fire Department recruitment, application, and hiring practices are non-discriminatory in both purpose and impact; and

WHEREAS, due to the significant time, expense, and uncertainty of continued litigation, the parties have made good faith efforts to resolve their disputes amicably and in the public interest and have participated in ongoing and extensive settlement negotiations; and

WHEREAS, the signatories herein have the full authority of their respective principals to enter into this Consent Decree on their behalf;

NOW, THEREFORE, IT IS HEREBY AGREED, by and between the undersigned, that the following terms shall be implemented without undue delay:

The 2005 Entry Level Firefighter List

1. The City may hire up to ten firefighters from the civil service list certified on June 13, 2005 and entitled "2005 Entry Level Firefighter" and will promptly develop plans for the administration of a new civil service examination in conformance with this Consent Decree. The current civil service list will not be extended..

Recruitment of Firefighter Job Applicants

2. The City shall in good faith seek to recruit and employ qualified black and other minority applicants for firefighters in numbers reflecting their availability in the relevant labor market which, for the purposes of this Decree, shall be Berks County, Pennsylvania. The most current U.S. Census Bureau population Census reports the racial composition of Berks County as follows:

	White persons, percent, 2004	92.7%
Black persons, percent, 2004		4.6%
American Indian and Alaska Native persons, percent, 2004		0.2%
Asian persons, percent, 2004		1.2%
Native Hawaiian and Other Pacific Islander, percent, 2004		0.1%

Persons reporting two or more races, percent, 2004	1.2%
Persons of Hispanic or Latino origin, percent, 2004	11.8%
White persons, not Hispanic, percent, 2004	82.5%

It is the goal of this Consent Decree to have a least one-half of new minority hiring of firefighters to be African-Americans. To achieve that objective, the City shall adopt and implement affirmative recruitment activities directed towards potential black and minority applicants in addition to recruitment directed at other potential applicants and shall use fair and non-discriminatory hiring and other employment practices.

3. In accordance with the purpose of this Decree, the City shall create and maintain a recruitment program aimed at attracting qualified black and other minority firefighter applicants. 4. The with budgetary constraints. The parties shall agree upon a reasonable amount, but in no event shall the City be required to expend more than \$17,000 for such media during any discrete period that it is recruiting applicants for a new administration of a civil service examination. The City may receive a credit of up to 25% (\$4,250.00) for "in-house" costs and expenditures (e.g. travel expenditures for recruiting and job fairs, labor costs associated with travel and recruitment efforts by firefighters and other City personnel, etc.).

5. The City's Statement on Equal Employment Opportunities shall be displayed or posted at all locations, including internet sites, where candidates may apply for employment as firefighters.

6. Notices regarding Written Test Dates for Entry Level Firefighters or for other application steps for prospective firefighters shall be sent for display or posting at schools,

churches and community organizations that have a substantial black or other minority representation.

7. The recruitment program shall have as its goal the recruitment of black and other minority applicants for numbers reflecting their availability in the City's labor market as set forth in Paragraph 2 above.

Data Maintenance

8. The City shall gather, maintain, and preserve information reflecting (a) the City's minority recruitment efforts, including but not limited to the recruitment processes set forth in paragraphs 3-7, supra, and (b) applicant flow data sufficient to determine the race and gender of every Firefighter applicant. Applicant flow data shall be maintained by the City in a manner that enables one to readily measure the race and sex of applicants who pass or fail at each stage of the application and selection process, including (if applicable) application screening, the written examination, the background investigation, the oral interview, the psychological examination, the physical fitness test, and the medical examination.

The Department Fire Diversity Board and Its Duties

9. The City shall create, by executive order, municipal ordinance, or other valid means, a Fire Diversity Board ("DB") comprised of seven voting members to be mutually selected within 90 days of the approval of the Consent Decree. All DB members shall serve without monetary compensation. DB's legal counsel shall be mutually selected within 90 days of the approval of the Decree and shall be compensated by the City for such services. If DB's legal counsel resigns or the DB requests his/her removal, the parties shall mutually agree on a

replacement. The DB shall play a key role in: (i) developing and implementing municipal policies and procedures that increase the representation of African Americans and other minority groups within the Reading Fire Department; (ii) assuring fair and equitable treatment of Fire applicants and potential applicants; and (iii) fostering better relations between the Fire Department and Reading's minority community.

The City of Reading's Director of Human Resources (or his/her designee) and the Chief of the City of Reading Fire Department (or his/her designee) shall be nonvoting ex-officio members of the DB.

10. The operational expenses of the FDB shall be funded by the City in an amount sufficient to enable the DB to effectively fulfill its mission.

11. The DB shall conduct such organizational meetings as are necessary to formulate a mission statement consistent with this Consent Decree and to establish necessary bylaws and internal operating procedures.

12. If a vacancy arises in the composition of the Board, the parties shall mutually agree on a replacement.

13. Prior to formal enactment, the initial bylaws and internal operating procedures shall be submitted to the undersigned parties, who shall have an opportunity to review and make recommendation(s) to these proposed bylaws and internal operating procedures for consideration by the DB.

14. The DB shall be empowered to establish, in its bylaws, a method of drawing on the funding provided and a method for requesting further funding from the City upon a showing of good cause.

15. The bylaws shall require the appointment of a Chair and Secretary for the DB.

16. DB meetings and proceedings shall be open to the public subject to the limitations applicable to public agencies under Pennsylvania's Open Meetings Law, 65 P.S. § 701, *et seq.* All exceptions available under the Open Meetings Law shall apply to the DB and its proceedings.

17. Within one year after this Consent Decree is approved by the Court, the DB shall determine the necessity of systemic changes to the method and manner in which the City recruits and selects Firefighters from the pool of job applicants and, if systemic changes are deemed necessary, shall recommend specific changes for implementation by the City. Prior to making any recommendation(s), the DB shall conduct appropriate fact-finding and research, including public hearings, consulting human resources experts (including the Diversity Consultant), analyzing affirmative action plans utilized in other Fire departments and municipalities throughout the United States, and consulting with Fire officials, City officials (including the City's Fire Civil Service Board), the NAACP, and members of Reading's minority and non-minority community.

18. At least 20 days prior to the formal issuance of any recommendation(s), the DB shall provide the undersigned parties with the proposed recommendation(s) and an opportunity to review and comment to the DB. Upon formal issuance, the DB's recommendation(s) shall be entitled to great weight, and it is anticipated that both parties will jointly support the recommendation(s) and that the City will act in good faith to implement the recommendation(s).

If both the City and the NAACP support any of the DB's recommendation(s), the parties shall file with the Court a petition to modify this Consent Decree to include the substance of the DB's recommendation(s). If, however, either the plaintiffs or the City objects to implementation of any of the DB's recommendation(s), as issued, the objecting party shall give reasonable written notice to opposing counsel, specifically identifying the recommendation(s) not approved, and the parties shall engage in good faith efforts to amicably resolve the dispute.

If the dispute cannot be resolved the parties shall notify the Court, and the Court will determine, after appropriate fact-finding proceedings whether to modify the Consent Decree to require implementation of the disputed DB recommendation(s). In determining whether to modify the Consent Decree to include any DB recommendation, the Court shall consider whether the recommendation is consistent with the intent of the parties in entering into this Consent Decree and whether the recommendation can be implemented in a manner that does not violate substantive law. *See, e.g., Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 576 n.9 (1984) ("a district court cannot enter a disputed modification of a Consent Decree in Title VII litigation if the resulting order is inconsistent with the statute").

19. The DB shall have timely access to the applicant flow data referenced in para. 8, and shall monitor and analyze this data on a regular basis.

20. The DB shall have timely access to and monitor the Fire Department's Firefighter recruitment, application, testing, and selection processes and assure that such processes are free from adverse impact and that such processes are validated in a manner that complies with 29 C.F.R. § 1604.01, *et seq.*

21. Whenever a African American or other minority job applicant is disqualified at any stage of the Fire Department application/selection process, except the written examination stage, the DB shall be so informed and shall be granted access to information concerning the disqualification decision in order to asses whether the decision was non-discriminatory and whether the disqualified applicant was treated in the same manner as similarly situated White applicants. If, after reviewing the information, the DB has concerns that the disqualified applicant's minority status may have been a factor in the disqualification decision, the DB shall report its concerns to the City's Fire Civil Service Commission which shall review the disqualification decision, take any remedial actions it deems appropriate, and apprise the DB of its response to the DB's concerns. It is understood that, in performing its duties under this paragraph, the DB shall take all steps necessary to ensure that applicants' personal information remain confidential.

The Diversity Consultant

22. The City shall retain a qualified person to serve in the position of Diversity Consultant ("Consultant"). The City may designate the person in the newly created job position in the Human Resources Department dedicated to equal opportunity issues provided that s/he is qualified to serve as the Consultant. The Diversity Consultant shall demonstrate experience with state or locally mandated civil service systems. If a member of the City's human resources department is not qualified to serve as as the Consultant, then the DB shall consult with the undersigned parties about the selection of a Consultant.

23. If the Consultant is not otherwise employed by the City, s/he shall be paid by the City.

24. The Consultant shall serve as a resource to the DB and to the Fire Department for expert guidance on issues concerning recruitment, application and hiring practices. Among his/her duties, the Consultant shall assist the DB with the development and implementation of recommendations, data monitoring obligations, and reporting obligations.

Application Fee Waiver

25. The City agrees to waive the application fee for financially disadvantaged Firefighter job applicants. The DB shall develop a plan for the criteria and method for administering the application fee waiver. Alternatively, it may apply the plan applicable to police officer applicants. Prior to formal enactment, the application fee waiver plan shall be submitted to the undersigned parties, who shall have an opportunity to review and make recommendation(s) to the proposed plan.

Reporting

26. Beginning one hundred eighty days after this Consent Decree is approved by the Court, the FDB shall, on a quarterly basis,* deliver to the undersigned counsel, the Mayor, the Managing Director, the Director of Human Resources, the Fire Chief, and the Court a written report addressing the City's efforts or plans to recruit African American and other minority Firefighters during the quarter including (a) all activities undertaken pursuant to the DB

* The first quarterly report shall be delivered one hundred eighty days after this Consent Decree is approved by the Court, and subsequent quarterly report will follow every three months thereafter.

recommendations, (b) the monitoring and analysis of applicant flow data and Firefighter recruitment, application, testing, and selection processes, (c) development of the criteria and method for administering the application fee waiver, and (d) any other matters that the DB desires to bring to the attention of the Court. In addition, thirty days prior to the certification of any Firefighter civil service list, the PBD shall provide to the undersigned counsel and the Court a list indicating the name, race, gender and proposed ranking of all Firefighter candidates on the anticipated civil service list and any applicant flow data that was not contained in the most recent quarterly report.

Financial Expenditures

27. The City shall bear all reasonable financial costs and expenses associated with compliance of the Consent Decree and shall act in good faith to ensure that the obligations set forth in this Consent Decree are adequately funded. Currently, the City commits to budget for the hiring of person to fill a job position in the Department of Human Resources responsible for equal employment opportunity. Furthermore, the City agrees to make a good faith effort to pay extra expenses beyond the budgeted amount upon a showing of good cause for the need for supplemental funding by the DB. The parties further agree that they will attempt, in good faith, to find alternate funding sources for supplemental funding.

Implementation and Compliance

28. The Court shall retain jurisdiction over this action for purposes of enforcement, interpretation, or modification of this Consent Decree until such time as this Consent Decree is terminated.

29. If either party believes that this Consent Decree has been violated or improperly applied or that it is about to be violated or improperly applied, that party shall give reasonable written notice to opposing counsel, and the parties shall engage in good faith efforts to amicably resolve the dispute. If, after the exhaustion of such good faith efforts, any party deems such efforts unsuccessful, the complaining party shall be permitted to commence mediation proceedings before a Court-annexed mediator designated by the Court. Where a dispute proceeds to mediation, the parties shall work in good faith to resolve the dispute in a practical, economical, and amicable manner. Absent extraordinary circumstances, no party shall engage in formal contempt proceedings unless the above mediation process has been exhausted. The parties understand that formal contempt proceedings are to be used, if ever, as a final resort.

30. All notices, instructions, requests for review, reports, or other written submissions required by this Consent Decree shall be sent by the required body or person by certified United States mail, return receipt requested, to the following representatives:

For the City of Reading:

Leon Churchill, Managing Director
City of Reading
815 Washington Street, Room 2-54
Reading, PA 19601-3690

Charles D. Younger, City Solicitor
City of Reading
815 Washington Street, Room 2-54
Reading, PA 19601-3690

Steven K. Ludwig, Esquire
Fox Rothschild LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291

For NAACP and /or Horne:

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David L. Rose, Esquire
Rose & Rose, P.C.
1320 19th Street N.W. Suite 601
Washington, D.C. 20036

Anson Asaka, General Counsel
NAACP
4805 Mount Hope Drive
Baltimore, MD 21215

31. This Consent Decree may be terminated at any time after its entry upon joint motion of the parties. Furthermore, at any time after five years from the date of Court approval of the Consent Decree, the City may move to, and the Court may, terminate or modify the Consent Decree upon a showing of substantial and good faith compliance with the Consent Decree's terms and proof that the purposes of the Consent Decree have been attained. Upon the filing of a motion to terminate or modify this Consent Decree, the Consent Decree shall remain in effect until such time as the Court shall rule upon the motion.

Litigation Costs, Expenses, and Fees

32. Within thirty days after this Consent Decree is approved by the Court, the City shall pay to Plaintiffs' counsel a total amount of Twenty-Three Thousand Dollars (\$23,000.00). This payment satisfies the City's *entire* liability to Plaintiffs for costs, expenses, and counsel fees which plaintiffs assert would be recoverable under 42 U.S.C. § 2000e-5(k), 42 U.S.C. § 1988, or any other cost/fee recovery provision, and neither Plaintiffs nor their undersigned counsel shall seek the payment of additional damages, costs, expenses, or fees. However, nothing herein shall preclude Plaintiffs or their counsel from seeking future costs, expenses, or fees incurred due to future contempt proceedings, future adversarial proceedings concerning the modification or continued application of this Consent Decree, or future proceedings necessitated by a third-party's challenge to the legality or validity of this Consent Decree.

APPROVED BY THE COURT:

JUAN R. SANCHEZ, J.