Michael Martinez, Plaintiff-Appellee, Vs. City Of St. Louis, Et Al.,
Defendants-Appellants.

Appeal No. 06-3554

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

2006 U.S. 8th Cir. Briefs 3554; 1900 U.S. 8th Cir. Briefs LEXIS 2

January 1, 1900

ON APPEAL FROM ORDERS OF THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

Hon. John F. Nangle, Presiding.

Initial Brief: Appellee-Respondent

COUNSEL: [*1] Clyde E. Craig, Naples, FL, Attorney for Appellee, Michael Martinez.

TITLE: BRIEF OF APPELLEE MICHAEL MARTINEZ

TEXT: SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

This is a reverse race discrimination case challenging the continuing validity of a consent decree issued in 1976 requiring the City of St. Louis to engage in race-based hiring of probationary firefighters to remedy past discrimination until racial parity was achieved. Plaintiff Martinez claims that the City impermissibly continued to engage in race-based hiring after racial parity was achieved in 1998 thereby delaying his employment as a firefighter in violation of Title VII of the Civil Rights Act of 1964, *42 U.S.C. 2000e* et seq., and the Equal Protection Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution. U.S. Const. amend. V & XIV.

Plaintiff Martinez contends that the district court properly dissolved the consent decree on November 5, 2003, properly modified the standard for determining when racial parity was achieved on February 24, 2005 from the labor force for the City of St. Louis to a broader geographic area known as the St. Louis Standard Metropolitan Statistical [*2] Area (SMSA) on the basis that was a more appropriate measure at the time this case arose because of a substantial change of circumstances, properly found that the City of St. Louis was guilty of race discrimination, and properly awarded plaintiff Martinez legal and equitable relief.

Since the facts are largely undisputed and the issues are straight-forward, plaintiff Martinez believes that oral argument of 15 minutes per side is adequate.

STATEMENT OF FACTS

In 1974 the United States and a group of firefighters organized as a group known as Firefighters Institute for Racial Equality (F.I.R.E.) filed complaints in the district court alleging race discrimination in hiring and promotions in the St. Louis Fire Department. Stip. n1 pars. 1 & 2; App. n2 89. *United States v. City of St. Louis, 410 F.Supp. 948, 960 (E.D.MO 1976),* reversed and remanded *sub nom. Firefighters Institute for Racial Equality v. City of St. Louis, 549 F.2d 506 (8th Cir. 1977),* cert.den. *434 U.S. 819 (1977).*

n1 "Stip." herein refers to the Joint Stipulation of the parties entered into in compliance with the district court's order of November 21, 2002.

[*3]

n2 "App." herein refers to the Joint Appendix filed herein pursuant to *Rule 30 FRAP.*

On June 16, 1975, the original parties to this seminal case agreed to the entry of a consent decree which, with the approval of the district court, was to observed pending final disposition of the case. Stip. par. 4; App. 89. The consent decree established a hiring goal which was to be implemented by a race-based hiring system of hiring approximately 50% African-Americans to fill vacancies until racial parity was reached in the City of St. Louis Fire Department. Stip. pars. 12 & 13; App. 91.

The benchmark established at that time for determining when racial parity was achieved was the civilian labor force for the City of St. Louis. Stip. pars. 12-16; App. 91. The consent decree did not provide for automatic termination, but rather required "action by the parties and the Court." Stip. par. 17; App. 91. On April 9, 1976, the district court adopted the terms of the consent decree, Stip. par. 5; App. 89; and the district court issued its final order in the case on June 28, 1976 again adopting the terms of the [*4] consent decree. Stip. par. 6; App. 90. *United States v. City of St. Louis, 418 F.Supp. 383 (E.D.MO 1976).*

In April 1990 the United States filed a motion to modify the consent decree by dissolving the long range hiring goal and race-based hiring system and reverting to non-race based hiring procedures. The United States argued at that time that the 50% hiring goal was no longer warranted because African-Americans comprised approximate 32% of non-probationary fire privates in the Fire Department, while the 1980 Census data for the St. Louis Standard Metropolitan Statistical Area (SMSA) showed that African-Americans represented 14.5% of the total civilian labor force, and 15.7% of the civilian labor force between the ages of 20 and 29. Stip. par. 18; App. 91-92. The United State's motion to modify the consent decree was opposed by both the City and F.I.R.E. who argued that African-American representation in the civilian labor force for the City of St. Louis alone (41%), rather than the entire St. Louis metropolitan area (SMSA), was the relevant labor market for comparison. Stip. par.19; App. 92. The district court denied the motion to modify at that time. Stip. par. [*5] 20; App. 92.

Plaintiff Martinez filed his complaint in the district court on April 18, 2001 alleging that he was denied employment as a firefighter because of his race (White). Plaintiff Martinez asserted his claims pursuant to Title VII of the Civil Rights Act of 1964, *42 U.S.C. 2000e* et seq., and *42 U.S.C. 1983* for denial of rights guaranteed by the Equal Protection Clause of the U.S. Constitution, and the Charter of the City of St. Louis. App. 41; Stip. par. 7; App. 90.

In February 2003 plaintiff Martinez filed his motion to dissolve the consent decree on the basis that racial parity had been achieved in the Fire Department. App. 115-117. Other parties also filed similar motions. App. 189-190; 356-358. By its Order of November 5, 2003, the district court granted the motions and dissolved the consent decree on the basis that "the remedial terms of the consent decree are no longer constitutional" because racial parity had been

achieved in the St. Louis Fire Department." App. 528-546.

In March 2003 the district court, sua sponte, asked the parties to brief the question of whether the civilian labor market for the City of St. Louis or [*6] the broader geographic area of the St. Louis Standard Metropolitan Statistical Area was the appropriate measure for determining whether racial parity had been achieved. App. 407. The parties complied with that order by providing facts and arguments. App. 409-413, 443-518. The district court also had substantial information before it of the changing demographics since the entry of the consent decree in the prior stipulations of the parties. Stip. pars. 36-51; App.96-100. In its Order of February 25, 2005, the district court found that "[m]indful of the changing workforce and residential demographics, the SMSA is the most appropriate geographical area for determining the relevant labor market;" App. 799; and that racial parity was achieved in the St. Louis Fire Department sometime in 1998. App. 803.

Plaintiff Martinez was eventually hired by the City of St. Louis Fire Department as a probationary firefighter on March 21, 2005. Stipulation Related to Relief entered into by the parties which is attached to this Brief as Addendum A, Add.A, par. 7.

On March 15 and 16, 2006, the district court held a jury trial on the issue of damages, and the jury returned a verdict in favor of plaintiff [*7] Martinez for compensatory damages in the amount of $ 5,000.00. App. 844. By its Order dated May 26, 2006, the district court awarded plaintiff Martinez a judgment for lost wages in the amount of $ 40,061.09. App. 853. Finally, in its Order dated September 5, 2007, the district court awarded plaintiff Martinez equitable relief in the form of retroactive seniority solely for the purpose of computing wages and retirement benefits. App. 905-914. Plaintiff Martinez's motion for attorney's fees was stayed by the same order. App. 913.

SUMMARY OF THE ARGUMENT

In order to have a complete grasp of the issues involved in this appeal, it is necessary to understand the following district court actions: (1) the Order of November 5, 2003 dissolving the consent decree, App. 528; (2) the Order of February 24, 2005 finding the City liable for race discrimination, App. 783; (3) the Order of March 13, 2006 clarifying the City's liability for race discrimination, App. 840; (4) the jury verdict in favor of plaintiff Martinez for compensatory damages, App. 844; (5) the Order of May 26, 2006 awarding plaintiff Martinez damages for lost wages, App. 853; (6) the Order of September 5, 2007 granting plaintiff [*8] Martinez equitable relief of retroactive seniority, App. 905.

Governmental racial classifications must be examined under the standard of strict scrutiny. In order to survive such strict scrutiny, race-based hiring goals must insure that the relevant labor market is identified to measure when racial parity is achieved.

A court's decision to modify a consent decree based on a substantial change in circumstances will be reviewed for abuse of discretion. Fact-based decisions to modify a consent decree are afforded even greater deference.

In conformity with its inherent authority to supervise its judgments and decrees, a court may modify or terminate a consent decree when the goals of the decree have been satisfied, when its continued application is not lawfully permissible, or when there is a substantial change in circumstances. The district court properly terminated the consent decree and modified the relevant geographic area for determining when its goals had been achieved for these reasons based upon substantial evidence before it.

The district court properly awarded plaintiff Martinez legal and equitable relief.

Therefore, the decision of the district court should be affirmed. [*9]

ARGUMENT

I. THE RELEVANT ACTIONS OF THE DISTRICT COURT

There are a number of district court actions which are crucial to an understanding of the issues in this appeal.

The district court's Memorandum and Order of November 5, 2003 granting the motions of several of the parties to dissolve the consent decree on the basis that the goals of the decree had been achieved, and that it was appropriate to modify the standard for determining when racial parity based upon a substantial change in circumstances. App. 528. The district court dissolved the consent decree in that Order, App. 546, and found that "substantial parity was achieved well before the 1998 hiring process." App. 545. This latter finding was based on the arguments and evidence submitted by the parties in compliance with the district court's Order of March 20, 2003 inviting the parties to brief the issue of the relevant geographic area for determining when racial parity was achieved in the St. Louis Fire Department. App. 407. The parties, of course, responded to that invitation by presenting substantial facts and arguments in support of their positions. App. 409, 443, 458, 472, 497, 512, 516.

The district court's [*10] Memorandum and Order dated February 24, 2005 was addressed to the issue of the relevant geographic area for determining when racial parity was achieved. App. 783. In that Order the district court found that the SMSA was "the relevant geographic area for hiring probationary firefighters effective sometime in 1998." App. 803. Based on that finding, the court found "that racial parity was achieved at that time," and granted plaintiff's motion for summary judgment on the issue of the City's liability. **Id.**

The district court's Order of March 13, 2006 granted the City's motion for clarification of its February 24, 2005 Order, and stated that the City "should have hired [plaintiff] Martinez . . . as a probationary firefighter at an earlier date, although the extent of damages incurred were yet to be determined." App. 840.

At a trial in March 2006 a jury returned a verdict for plaintiff Martinez for compensatory damages in the amount of $ 5,000.00. App. 842.

In its Order of May 25, 2006, the district court granted plaintiff Martinez's motion to amend the judgment, and based upon the stipulation of the parties granted plaintiff Martinez a judgment of $ 40,061.09 for lost wages. [*11] App. 853. See Add.A, pars. 9, 10.

In its Order of September 5, 2007, the district court granted plaintiff Martinez equitable relief in the form of retroactive seniority for the limited purposes of calculating wages and pension benefits. App. 905.

II. THE LEGAL PRINCIPLES APPLICABLE TO THIS CASE

At the heart of this case is the legal principle that the Equal Protection Clause of the U.S. Constitution applies equally to all races, and governmental racial classifications are inherently suspect. *Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 223-224 (1995); City of Richmond v. J.A. Croson Co., 488 U.S. 469, 490 (1988).* Such race-based classifications are to be reviewed with strict scrutiny. *Parents Involved in Community Schools v. Seattle School Dist. No. 1, U.S. , 127 S.Ct. 2738, 2751, 168 L.Ed.2d 508, 523 (2007).*

A governmental classification based on race must be narrowly tailored to limits its adverse effects on individuals not favored by the classification. *Wygant v. Jackson Bd. of Edu., 476 U.S. 267, 280 (1986); Fullilove v. Klutznick, 448 U.S. 448, 480 (1980).* In [*12] order to survive strict scrutiny, race-based hiring goals which are measured by the relevant labor market must insure that the labor market is properly identified. *Aiken v. The City of Memphis, 37 F.3d 1155, 1164 (6th Cir. 1994).*

A court's decision to modify or terminate a consent decree is reviewed for abuse of discretion. *McDonald v. Carnahan, 109 F.3d 1319, 1321 (8th Cir. 1997).* "An abuse of discretion will only be found if the district court's judgment was based on clearly erroneous factual findings or conclusions." *Parton v. White, 203 F.3d 552, 556 (8th Cir. 2000).* Even greater deference to a district court's decision to modify or terminate a consent decree arises when the decision is fact-based. *McDonald v. Armontrout, 908 F.2d 388, 390 (8th Cir. 1990).* Thus, since the district court's decisions were dependent upon the resolution of factual issues, the standard of review that applies in this case may be

said to be clear abuse of discretion which is similar to the clearly erroneous standard of review.

It is beyond question that the district court had the authority to issue the consent decree in the first instance [*13] to remedy the effects of race discrimination in the City of St. Louis Fire Department. *Local Number 93, International Association of Firefighters, AFL-CIO, 478 U.S. 501, 515 (1986).* There is also no question that plaintiff Martinez has standing to challenge the validity of the consent decree when it was impermissibly applied to him, even though he was not a party to the case when the consent decree was entered. *Martin v. Wilks, 490 U.S. 755, 761-768 (1989); Donaghy v. City of Omaha; 933 F.2d 1448, 1456 (8th Cir. 1991).* Although a consent decree is essentially contractual in nature, by asking a court to enter a judgment enforcing their agreement, the parties necessarily consent to the full exercise of the court's inherent authority to supervise, modify or terminate its judgments or decrees. *Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 378 (1992); Local Number 93, International Association of Firefighters, AFL-CIO, 478 U.S., at 518. Rule 60(b)(5) Fed.R.Civ.P.*

Clearly, a consent decree should be dissolved when its purposes have been achieved. *Johnson v. Heffron, 88 F.3d 404, 407 (6th Cir. 1996),* [*14] cited with approval in *McDonald v. Carnahan, 908 F.2d, at 1321.* Indeed, a consent decree is not an excuse to continue a race-based hiring system beyond the point when the goals of the decree have been satisfied by racial parity. *Donaghy v. City of Omaha, 933 F.2d, at 1456-1458; Police Association of New Orleans, ex rel. Cannatella v. City of New Orleans, 100 F.3d 1159, 1168-1169 (5th Cir. 1996).* To do otherwise would turn it into "an instrument of wrong." *United States v. City of Fort Smith, 760 F.2d 231, 233 (8th Cir. 1985),* citing *United States v. Swift & Co, 286 U.S. 106, 114 (1932).* Also, a consent decree must be modified or terminated if changing circumstances have made its continued operation unlawful. *Rufo v. Inmates of Suffolk County Jail, 502 U.S., at 388.*

A consent decree may be modified or terminated on the basis of a substantial change in circumstances. A party seeking to modify or terminate a consent decree has the burden of showing a significant change in circumstances. *Rufo v. Inmates of Suffolk County Jail, 502 U.S., at 383.* The factors for a court [*15] to consider in deciding whether or not to modify or terminate a consent decree are: "(1) any specific terms providing for continued supervision and jurisdiction over the consent decree; (2) the consent decree's underlying goals; (3) whether there has been compliance with prior court orders; (4) whether defendants made a good faith effort to comply; (5) the length of time the consent decree has been in effect; and (6) the continuing efficacy of the consent decree's enforcement." *McDonald v. Carnahan, 908 F.2d, at 1321.* The decision of a court to modify or dissolve a consent decree is not governed by rigid standards, but rather must be approached under flexible standards which recognize the changing realities of the circumstances. *Rufo v. Inmate of Suffolk County Jail, 502 U.S., at 381.*

In the employment context with regard to entry level positions, racial parity between the work force and the composition of the relevant population is a legitimate remedial goal. *City of Richmond v. J.A. Croson Co., 408 U.S., at 486-487.* However, changing demographics may provide the basis for modifying the measurement standard. *Rufo v. Inmates of Suffolk County Jail, 502 U.S., at 385-386;* [*16] *Parton v. White, 203 F.3d, at 555.* Indeed, experience demonstrates that racial demographics do change over time. *Booker v. Special School Dist. No. 1, 585 F.2d 347, 350 (8th Cir. 1978).*

This court has recognized that the victims of race discrimination are entitled to fully relief. "A district court is obligated to grant a plaintiff who has been discriminated against on account of race . . . the most complete relief possible." *Briseno v. Central Technical Community College Area, 739 F.2d 344, 347 (8th Cir. 1984).* Backpay is an appropriate make-whole remedy for a victim of race discrimination. *Equal Employment Opportunity Commission v. The Rath Packing Company, 787 F.2d 318, 330 (8th Cir. 1986).* The equitable relief of retroactive seniority is also an appropriate remedy for a victim of race discrimination. *Harper v. General Grocers Company, 590 F.2d 713, 716 (8th Cir. 1979); Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561, 579-580 (1984).*

III. THE DISTRICT COURT CORRECTLY IDENTIFIED THE RELEVANT GEOGRAPHIC AREA FOR COMPARISON WITH THE CITY'S WORKFORCE TO DETERMINE WHEN [*17] **RACIAL PARITY WAS ACHIEVED.**

Appellant argues that the district court erroneously modified the geographic standard for determining when racial was achieved from the labor market for the City of St. Louis to the broader geographic measure of the SMSA. Appellant describes that as a "unilateral" change. Appellant's Brief, pg. 30. Although the issue was raised by the district court *sua sponte*, it was by no means unilateral in the sense that there was no input from the parties. The district court invited the parties to submit briefs on the issue (App. pg. 406), and the parties responded fully by submitting arguments and facts in support of their positions. App. pp. 409-417, 443-516.

At the time the district court considered the question of the relevant standard of comparison for determining when racial parity was achieved, it had significant additional information before it about the changing demographics since the consent decree was entered. Stip. pars. 34-51; App. 95-100. In addition, the parties entered into a Joint Stipulation of Facts Pursuant to the Court's Order of June 4, 2004 which is attached to this Brief as Addendum B addressing this issue. That Stipulation demonstrates [*18] that there had been a substantial change in circumstances since the consent decree was originally issued. Specifically, the Stipulation reveals that in recent years the City had actively recruited probationary fire privates beyond the labor market for the City of St. Louis. Add.B, pars. 63-68).

Thus, contrary to Appellant's assertion that the district court modified the standard for determining when racial parity was achieved "without benefit of evidentiary support," Appellant's Brief, pg. 32; the district court had substantial evidence before it as the basis for its decision in that regard. These facts clearly demonstrate a substantial change in circumstances which justify the district court's decision to modify the relevant labor market for comparison in determining when racial parity was achieved. *United States v. City of Fort Smith, 760 F.2d, at 233; Rufo v. Inmates of Suffolk County Jail, 502 U.S., at 388.* Although an evidentiary hearing was not conducted, none was necessary since the court had all of the relevant facts before it. *Cody v. Hillard, 139 F.3d 1197, 1200 (8th Cir. 1998).* Furthermore, the City can hardly complain [*19] about the district court's failure to hold an evidentiary hearing when it never requested one.

Jenkins v. Missouri, 216 F.3d 720 (8th Cir. 2000), relied on by Appellant (Appellant's Brief pg. 40), merely stands for the proposition that a party must be afforded the opportunity of notice and hearing before a court takes an adverse action in a case. It does not stand for the proposition that a court may not raise an issue *sua sponte* and act on it after giving the parties full opportunity to submit evidence and arguments in support of their positions on the issue. The latter is what happened in this case.

Appellants also argue that the district court erroneously failed to adjust the SMSA for race-neutral factors. Appellant's Brief pg. 42. Appellant's argument in this regard does not indicate that it asked the district court to do so. Furthermore, the district court's decision in this regard is well within its broad discretion to modify the terms of a consent decree based upon a substantial change in circumstances. *Parton v. White, 203 F.3d, at 555.*

Appellant's arguments about the district court's modification of the geographic standard of comparison [*20] for determining when racial parity was achieved essentially suggest that a court is locked into decisions made almost 30 years previously in spite of a substantial change in circumstances. That claim is inconsistent with the court's broad discretion to supervise and modify its judgments and decrees. *Rufo v. Inmates of Suffolk County Jail, 502 U.S., at 378; Local Number 93, International Association of Firefighters, AFL-CIO v. City of Cleveland, 487 U.S., at 518; Rule 60(b)(5) Fed.R.Civ.P.*

Therefore, plaintiff Martinez believes that the district court's decision to adopt the SMSA as the relevant geographic standard of comparison was well within its discretion on the facts before it. However, if this Court should decide otherwise, it would be appropriate to remand the case for further development of the relevant facts. *Cody v. Hillard, 139 F.3d, at 1200.*

IV. THE DISTRICT COURT PROPERLY FOUND THAT THE CITY WAS GUILTY OF RACE DISCRIMINATION.

The City argues that the district court erred in imposing liability on it because of its failure to seek to modify or

terminate the consent decree once racial parity was achieved. The City [*21] argues that the consent decreed did not imposed a duty on it to do so, and therefore it cannot be held liable for continuing to engage in race-based hiring after racial parity was achieved in the Fire Department. Appellant's Brief, pg. 45. The City totally misconceives its responsibility to protect all of its citizens from race discrimination. It may not take a passive role in fulfilling that responsibility.

The consent decree was entered for a minimum of five years with the right of the parties to move for modification or termination thereafter on a showing that "the goals of [the] decree in providing equal employment opportunities have been fully achieved." Stip. part. 17; App. 91. Although this language is permissive, it does not limit the City's responsibility to seek to discontinue the race-based hiring system once racial parity was achieved in the Fire Department. The district court considered the termination language of the consent decree to be flawed. See Order of November 5, 2003, pg. 6, App. 533-534. But there is no question that the City had the authority to move to modify or terminate the consent decree, and it had an affirmative duty to do so once the long-term hiring [*22] goals were achieved. That duty arises from the fact that the City has the fundamental duty to protect all its citizens from impermissible race discrimination. Continuing race-based hiring after racial parity was achieved in the Fire Department discriminated against plaintiff Martinez on the basis of race. Such discrimination is not excused by the existence of a consent decree whose remedial goals had been achieved. *Donaghy v. City of Omaha, 933 F.2d, at 1458; Police Association of New Orleans ex rel. Cannatella v. City of New Orleans, 100 F.3d, at 1168-1169.*

It is not as if the City was caught unaware. In 1990 the United States moved to modify the consent decree on the basis that racial parity had been achieved if the SMSA was used as the relevant measure. Stip. par. 18; App. 91-92. Although the district court denied the motion and declined to adopt the SMSA as the relevant benchmark at that time, Stip. par. 20; App. 92, it should have been abundantly clear to the City that racial parity in the Fire Department was close on their heels whatever measurement standard was used. Yet the City did absolutely nothing to verify that, or to establish a review [*23] procedure to identify when racial parity was in fact achieved in the Fire Department. Therefore, the City's suggestion that it was taken flat-footed and by surprise is not borne out by the facts, and it is clear that the City took a passive role which permitted race discrimination in hiring in the Fire Department. The City must be held responsibility for that passivity which resulted in harm to plaintiff Martinez. The parties have stipulated that but for the race-based hiring system plaintiff Martinez would have been hired as a probationary firefighter in March 2000. Joint Stipulation of Facts entered into on March 10, 2006 attached to this Brief as Addendum C, Add.C, par. 60. He was not hired until March 2005. Add.A, par. 7. That five year delay was not permissible.

The City's argument that a bona fide affirmative action plan is a defense to a reverse discrimination claim (Appellant's Brief, pg. 46) ignores the fact that this affirmative action plan was no longer bona fide or valid once racial parity had been achieved in the Fire Department. Nor is the Appellant's argument valid that the district court had the obligation to supervise the decree to determine when racial parity was [*24] achieved. Appellant's Brief, pg. 47. Consent decrees are fundamentally contractual in nature, *Rufo v. Inmates of Suffolk County Jail, 502 U.S., at 378;* and it is primarily the parties' responsibility to supervise compliance with its provisions and achievement of its goals. It would place an intolerable burden on courts to assume the primary responsibility in that regard.

V. THE DISTRICT COURT PROPERLY AWARDED PLAINTIFF MARTINEZ LEGAL AND EQUITABLE RELIEF.

The City argues that it is not liable to plaintiff Martinez for damages "because it was actively monitoring the percentage of blacks in the Fire Department and comparing it to the percentage of blacks in the labor force in the City of St. Louis as required by the 1976 consent decree." Appellant's Brief, pg. 50. There is absolutely no evidence that the City was doing anything of the sort. On the contrary, the evidence strongly suggests that the City did not make any effort to monitor compliance with the long-term hiring goals of the consent decree.

The City was, of course, aware that the United States had filed a motion in 1990 seeking to modify the consent decree on the basis that racial parity had been achieved [*25] measured by the SMSA. Stip. par. 18, App. 91. The City

was also aware that during the 2000 selection process for probationary fire private plaintiff Martinez was the second alternate. Add.B, par. 118. The first alternate was hired but plaintiff Martinez was not, **Id.,** even though eight African-Americans with lower composite scores than his were hired. Add.B, par. 120. If the City was actively monitoring compliance with the long-term hiring goals of the consent decree, those facts should have at least prompted a review. But the City was not monitoring compliance with the long-term hiring goals of the consent decree, and it did not conduct a review.

The City argues that *Quinn v. City of Boston, 325 F.3d 18 (1st Cir. 2003),* relied on by the district court in its Order of February 24, 2005 granting summary judgment in favor of plaintiff Martinez (App. 801-802) is distinguishable on the basis that the *Quinn* court decided the case on the basis of the measure of the original consent decree. On the contrary, *Quinn* made it abundantly clear that measures of parity in consent decrees must remain flexible to meet changing circumstances. *325 F.3d, at 29-30.* [*26]

This Court has recognized that victims of race discrimination are entitled to "the most complete relief possible." *Briseno v. Central Technical Community College Area, 739 F.2d, at 347.* Therefore, the district court properly granted plaintiff Martinez legal and equitable relief.

CONCLUSION

The district court properly identified the relevant geographic area for comparison with the City's workforce to determine when racial parity was achieved, properly found that the City was guilty of race discrimination, and properly awarded plaintiff Martinez legal and equitable relief. Therefore, the judgment of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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