Schaefer v. Tannian

United States District Court for the Eastern District of Michigan, Southern Division
April 17, 1995, Decided ; April 17, 1995, FILED
CIVIL ACTION NO. 73-39943

Reporter: 1995 U.S. Dist. LEXIS 11816
GRACE SCHAEFER, ET AL., Plaintiffs, v. PHILIP G. TANNIAN, ET AL., Defendants.

Subsequent History: [*1] Adopting Order of August 7, 1995, Reported at: 1995 U.S. Dist. LEXIS 11275.

Counsel: For GRACE SCHAEFER, individually and as representative of a class, plaintiff: Lucia H. Simpson, Detroit, MI. John R. Runyan, Jr., Sachs, Waldman, Detroit, MI.

Vernita Hurst, appellant, [PRO SE], Detroit, MI.

Sally Joan Adams, appellant, [PRO SE], Westland, MI.

For DETROIT POLICE OFFICERS ASSOCIATION, defendant: James M. Moore, Gregory, Moore, Detroit, MI.

Judges: VIRGINIA M. MORGAN, UNITED STATES MAGISTRATE JUDGE. DISTRICT JUDGE PAUL GADOLA

Opinion by: VIRGINIA M. MORGAN

Opinion

REPORT AND RECOMMENDATION TO ACCEPT AND APPROVE CLASS ACTION SETTLEMENT

This matter is before the court following a hearing to determine the fairness of the $ 10.8 million dollar settlement reached by the parties in this class action. [1] The underlying case was filed over twenty years ago pursuant to Title VII and *42 U.S.C. § 1983*. The class members are women police officers who have alleged that the City of Detroit Police Department discriminated against them in hiring, promotion, and compensation. After years of litigation, various orders for injunctive relief, and extensive negotiation, the parties reached a settlement with respect to monetary payments to individual class members. The previous orders granting injunctive relief are not at issue and remain in force to the extent that they are still applicable. The court has been asked to approve the monetary settlement. A fairness hearing on the settlement was held before the magistrate judge. A notice containing the hearing date and terms of [*2] the settlement was mailed to all class members. The form of the notice was agreed to by counsel and approved by the court. At the hearing, counsel for the plaintiff class, counsel for the City, class representatives, and the court summarized the history of the case, reviewed and responded to the written comments received prior to the hearing, and considered comments from members of the class and the public who attended the hearing.

For the reasons discussed in this Report, it is recommended that the settlement be approved and accepted by the court, and that the parties present an appropriate consent judgment incorporating the terms of the settlement for signature by the district judge.

BACKGROUND OF THE ACTION

This class action was filed April 10, 1973. Plaintiff Grace Schaefer, on behalf of herself and others, alleged [*3] that the police department for the City of Detroit violated Title VII of the Civil Rights Act, 42 U.S.C. § 2000(e) et. seq. and *42 U.S.C. § 1983* by discriminating against women in hiring, promotion, and compensation. Throughout the intervening 22 years, a series of court orders has defined who is eligible to participate as a member of the class. The plaintiff class has been defined as a group of approximately 800 women who had been employed by or applied for employment with the Detroit Police Department (D.P.D.) between April 10, 1970, and April 10, 1973. The class has been treated as subclasses composed of individuals (1) who were not hired due to gender [the hiring subclass], (2) who were denied the opportunity for promotion based on gender [the promotion subclass], and (3) who were denied appropriate compensation for duties performed based on the pay that male officers received for performing essential similar duties [compensation subclass]. (Tr. 8) [2] On May 22, 1974, the court found, on the basis of undisputed facts, that the City defendant had violated Title VII of the Civil Rights Act of 1964 and the equal protection clause of the fourteenth amendment by discrimination [*4] on the basis of sex against women applicants by giving written

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[1] The amount of the settlement does not include fees for counsel for the plaintiff class. These have routinely and regularly paid by defendants on an ongoing basis pursuant to court order.

[2] These citations refer to the transcript pages of the Fairness Hearing of February 21, 1995.

entrance examinations to men more frequently than women, by having a quota limiting police women to a very small percentage of the police employees of the department, and by restricting new police women employees almost solely to positions in the Women's Division or its successor division. (Tr. 9, Memorandum Order of May 22, 1974) On June 18, 1974, the court granted partial summary judgment, holding that D.P.D. had impermissibly discriminated on the basis of sex by maintaining and applying separate and unequal entrance requirements, placement tests and eligibility lists for male and female applicants, and by excluding female officers from the entry level position of patrolman. Women were required to be 21 years old and have two years of college; men could be 18 and high school graduates or the equivalent. (Tr. 10) On July 3, 1974, the court first spoke to the discriminatory promotional practices in its order on partial summary judgment. The court found that D.P.D. had discriminated against the female officers in both promotion and assignment. The various discriminatory practices had existed for at least a decade. On December [*5] 16, 1991, Hon. Paul V. Gadola, to whom the case had been assigned, found that the City defendants had discriminated on the basis of sex in paying female police officers less for performing the same investigative duties as detectives, a classification limited to male officers and eliminated in December of 1970, with all the men in that classification promoted to sergeant investigators. The court found that the action increased the wage disparity between the males and females and constituted unlawful discrimination. (Tr. 12) Later, the court ordered that back pay was appropriate and referred the matter to the magistrate judge, as special master, for a determination of back pay due. The parties subsequently reached a settlement of the action, which settlement is currently before the court for approval.

THE CLASS

The class of plaintiffs was divided into subclasses.

1. *Promotion/Compensation Subclass.*

The [*6] promotion and compensation subclass is composed of women who were denied opportunities for promotions because of their sex, and women who were not compensated at the same rate as men who performed the same duties. The subclass consists of 113 women who have been employed as police officers by the Detroit Police Department since at least April 10, 1970, and who were eligible for promotion to the rank of sergeant before June 30, 1975, or eligible for promotion to the rank of lieutenant before June 30, 1976. The compensation subclass is limited to all women who since April 10, 1970, have been employed by the Detroit Police Department as police officers and were assigned to the women's division or its successor divisions at any time before August 1, 1973. (Tr. 18-19) The court determined in its December 16, 1991 Memorandum Opinion that women assigned to that section were performing the same work as males outside the women's division who were paid at a higher rate. As these classes overlap, they were treated as one for the purposes of back pay calculations.

2. *Hiring Subclass.*

The hiring subclass is composed of 708 women who were not hired because of their sex. This class was restricted [*7] to all females who applied for employment with the Detroit Police Department as police officers since April 10, 1970, [three years before the lawsuit was filed] and who were hired at any time before March of 1978. (Tr. 17) Twenty-four members of the compensation/promotion subclass are also members of the hiring subclass. The hiring subclass has been the primary beneficiary of the orders for injunctive relief with respect to both hiring and seniority.

PREVIOUS INJUNCTIVE RELIEF

Throughout the course of this litigation, the court has undertaken to order remedial relief on several occasions through the issuance of various injunctive orders. The City has also endeavored on its own to correct of some of the discriminatory practices. These efforts have resulted in significant benefit to the class and constitute a significant portion of the relief to which the class would have been entitled had the case proceeded to trial or further appeal. On May 13, 1974, the district court ordered the first of a series of remedial orders. (Tr. 12) On that date, the court enjoined many of the discriminatory hiring and assignment practices and ordered the department to hire one qualified woman [*8] applicant for each male hired until the list of eligible female applicants prior to the date of the injunction was exhausted. On June 7, 1974, a second preliminary injunction addressed the promotional discrimination requiring the department to promote 19 females to the rank of sergeant and thereafter to promote without regard to sex. Approximately one year later, the City experienced a budgetary crisis which threatened to cause layoffs of approximately 825 police officers, including all of the women hired pursuant to the court's initial injunction. In 1976, the court, following a directive from the Sixth Circuit Court of Appeals, awarded retroactive seniority for purposes of layoff and recall to all identifiable female victims of defendant's illegal hiring discrimination. The seniority dated back to the date of their first written application which would have been accepted by the police department had the applicant been male. (Tr. 14) Hiring subclass members who filed timely claims with the court were also given the opportunity to prove that they would have applied earlier than the date of

their first written application if it had not been for the defendant's discriminatory hiring [*9] practices. Between June 23, 1980, and December 5, 1985, attorney George Roumell, acting as a special master, heard claims for seniority relief from 487 class members whose seniority had not been set in the court's order or who were making a claim for pre-application seniority relief. In the interim, the court issued several orders related to the implementation and determination of seniority and on October 19, 1988, issued an order implementing the seniority relief previously awarded for all purposes for which seniority or length of service is used in determining an officer's entitlement to competitive and non-competitive benefits. (Tr. 15) The court did not make any rulings at that time on back pay and retroactive services credit for purposes of pension and retirement.

EFFORTS TO DETERMINE BACK PAY

On May 7, 1991, the Honorable Paul Gadola granted plaintiff's motion for an order awarding retroactive service credit for purposes of pension and retirement, [3] but reserved the issue of back pay until the court could make a decision on that issue with respect to each class member. On June 1, 1992, the court concluded that individual class members were entitled to back pay. The magistrate [*10] judge was appointed as special master to determine the amount of back pay due individual plaintiffs. Following such a determination, either or both parties could file objections to the special master's report and the district judge would then determine the amount due. See, FRCP Rule 53.

The first order of business before the special master was to identify the members of each subclass. Although previously treated as three subclasses, the parties agreed that the compensation and promotion subclasses could best be addressed as one. The dates for which back pay was due were then determined. While the seniority dates for the hiring subclass had been previously determined by the special master, dates of maternity leave, if any, and assignments and appropriate pay levels had yet to [*11] be calculated for each plaintiff. The issue then became the degree and extent to which back pay should be individually determined. The magistrate judge and counsel discussed several options, balancing completely individualized calculations against the amount of difficulty in calculation, and the time needed for the determination to be made. With respect to both subclasses, counsel for plaintiff class was unwilling to agree to anything less than completely individualized determinations for each member based on the date she should have been hired. The parties eventually agreed upon a formula for calculating the amounts for the hiring subclass members which took into account shift differential, holidays, overtime, and similar matters so as to arrive at an individualized back pay amount for each plaintiff. However, neither counsel would agree to the formula for all purposes, the City arguing that it was a ceiling on the amount of back pay and the plaintiff's counsel arguing that it was a floor. Both reserved the right to file objections to the amounts. Based upon the formula, the City's financial section calculated the amount of back pay for each individual in the hiring subclass. This [*12] was done separately for each plaintiff, utilizing a worksheet prepared by the City, incorporating the formula and the relevant dates for each member.

Offset against such amount were any amounts earned in mitigation while the woman was not employed by the police department. In order to make a separate individualized determination for each plaintiff as to the amount of her offset and yet avoid extensive interrogatories and deposition of each class member, the court sent each plaintiff a Social Security income release form and an accompanying notice. The notice advised the plaintiff to fill out this form and return it to the court and advised that failure to return the form would preclude her from pursuing a claim for back pay in connection with the action. [4] The majority of hiring subclass plaintiffs returned the form, but some 94 did not. Some forms were returned as undeliverable, despite the fact that the court made several efforts to reach them, including requiring the City to run a Secretary of State records search for missing plaintiffs.

[*13] The court continued to discuss a similar formula with respect to the compensation/promotion subclass, but no formula was agreed upon prior to the discussion of settlement of the action as a whole. However, no mitigation was at issue for these plaintiffs since all of them had been employed by the City during the relevant period.

NEGOTIATION OF SETTLEMENT

After several months of discussion about the calculation methods, and following the election of a new mayor, settlement discussions began in earnest. The City reaffirmed its willingness to negotiate a settlement. Plaintiffs' counsel met with class representatives, the

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[3] It should be recognized that neither the Pension Plan nor its Board are defendants in this lawsuit. Pension issues are not relevant to evaluation of this settlement. See, *White v. N.F.L.,* 822 F. Supp. 1389, 1430 (D. Minn. 1993).

[4] At that time, the issue of back pay was the only issue before the magistrate judge. Thus, failure to return the form would terminate the individual's right to recover any money at issue in the proceeding.

court, and the City's attorney on several occasions. After consultation with the class representatives, plaintiff's counsel made an offer of settlement, a written, unconditional demand in the amount of $ 10.8 million dollars, on behalf of the class as a whole. Plaintiffs agreed to apportion that amount among themselves. (Letter from John Runyan, dated October 12, 1994.) The City's position always had been that it was willing to settle the case, but that it must settle with the class as a whole, not with separate subclasses, and the City did not take a position [*14] on how the money should be divided among the class members, so long as the court approved the settlement as reasonable and adequate. Issues of whether non-economic damages could be recovered, the amount of interest calculation on the back pay, when interest should begin to run, the rate of interest, the mitigation amounts, whether any of the money could be allocated as recovery for personal injury, and other issues were taken into account in these negotiations, although no determination had been made on them through court orders. Each subclass's representatives met with Mr. Runyan separately and calculated an amount satisfactory to the subclass. The demand for $ 10.8 million dollars was the sum of the demands from the subclasses. The hiring subclass demanded five million eight hundred thousand ($ 5,800,000) dollars; the compensation/promotion subclass demanded five million ($ 5,000,000) dollars. However, the settlement demand and the City's acceptance was always and only to the class as a whole. The City, through its city council, accepted the settlement demand of $ 10.8 million on November 23, 1994, which was communicated by city counsel in a letter dated December 1, 1994, to Mr. [*15] Runyan with copy to the court. Notices of the settlement were then mailed to each class member and the fairness hearing was held.

APPROVAL OF THE SETTLEMENT

As is discussed below, due process has been provided to class members with respect to all aspects of the settlement and the settlement is fair, reasonable, and adequate. Therefore, the court should approve the settlement.

The Notice

Federal Rule of Civil Procedure Rule 23(e) states that a "class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Although the court is not generally required to provide individual notice of a proposed settlement to the class members, [5] individual notice to all class members was provided here. The notice was agreed to by both counsel and approved by the court with respect to form, method, and content. In addition, newspaper coverage of the settlement served to alert interested citizens to its terms and the time and date of the scheduled fairness hearing. The notice provided the opportunity to make written comments and to appear [*16] and be heard at the fairness hearing. The court received approximately 30 written comments on the settlement before the hearing. Approximately 80 people attended the hearing and about 15 made public comments. [6] These facts persuade the magistrate judge that the notice of the settlement amply accomplished the purposes for which due process requires such notice, namely, to "assure that before the settlement receives judicial approval the court be well-informed of the views of those who feel that they are being called upon to make sacrifices. Only by being so informed can the court be certain that the settlement does not compromise the legal rights of class members without their consent." *Mandujano v. Basic Vegetable Products,* 541 F.2d 832, 835 (9th Cir. 1976).

Terms of the Settlement

The policy in [*17] federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context. *Armstrong v. Board of Sch. Directors,* 616 F.2d 305, 312-3 (7th Cir. 1980). Settlement of the complex disputes often involved in class actions minimizes the substantial burdens to the parties and to scarce judicial resources that such litigation entails. *Armstrong,* at 313. Of course, the very essence of settlement is compromise, a yielding of absolutes and an abandoning of highest hopes. *Cotton v. Hinton,* 559 F.2d 1326, 1330 (5th Cir. 1977). The Supreme Court has explained the nature of consent decrees following a settlement:

> Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation.*United States* [*18] *v. Armour & Co.,* 402 U.S. 673, 681-2, 91 S. Ct. 1752, 29 L. Ed. 2d 256 (1971).

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[5] *Franks v. Kroger Co.,* 649 F.2d 1216, 1222-23 (6th Cir. 1981), *vacated on reh'g on other grounds,*670 F.2d 671 (1982).

[6] Some of these were the same individuals who had previously written.

It must be recognized that in reviewing the proposed settlement, the court is not presented with a choice between alternative remedies. Neither the district court nor the court of appeals is empowered to rewrite the settlement agreed upon by the parties. While modifications may be suggested by the court, it ultimately must consider the proposal as a whole and as submitted. Approval must then be given or withheld. In short, the settlement must stand or fall as a whole. *Pettway v. American Cast Iron Pipe Co.,* 576 F.2d 1157, 1172. (5th Cir. 1978).

In evaluating a class action settlement pursuant to *Rule 23(e)*, the district court's primary responsibility is to ensure that the settlement is "fundamentally fair, adequate, and reasonable." *Officers for Justice v. Civil Service Com'n.,* 688 F.2d 615, 625 (9th Cir. 1982) (collecting cases). Such determination is committed to the sound discretion of the district court and will not be overturned except on a showing that the district court clearly abused its discretion. *Wiener v. Roth,* 791 F.2d 661 (8th Cir. 1986). The settlement is not to be judged against [*19] a hypothetical or speculative measure of what might have been achieved by the negotiators. *In Re Corrugated Container Antitrust Litigation,* 643 F.2d 195, 212 (5th Cir. 1981). Courts considering the fairness of a settlement in a class action case have looked to a number of factors to determine whether the settlement is reasonable and adequate. *Officers for Justice, supra*, 688 F.2d at 625; *Reggie White v. N.F.L.,* 822 F. Supp. 1389 (D. Minn. 1993). These include the fairness to those affected, the adequacy of the settlement to the class, and the public interest. *Williams v. Vukovich,* 720 F.2d 909, 921 (6th Cir. 1983). Courts look to the strength of plaintiffs' case on the merits, balanced against the benefits to the class provided by the settlement; the opinions of the participants, including class counsel, class representatives, and class members; complexity, expense, and likely duration of further litigation; the extent of discovery completed and the stage of the proceedings; risk, expense and duration of further litigation; amount offered in settlement; the presence of a governmental participant; and evidence, if any, that the proposed settlement is the product of fraud [*20] and collusion. *Officers for Justice, supra,* 688 F.2d at 625; *White v. N.F.L.,* 822 F. Supp. at 1417. This is not an exhaustive list of relevant considerations and does not indicate the priority of the factors. The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claims, the type of relief sought, and the unique facts and circumstances presented by each individual case. *Officers for Justice, supra,* 688 F.2d at 625. "In weighing the strength of plaintiffs' case against the benefits provided by the proposed settlement, the court cannot be expected to balance the scales with the nicety of an apothecary. The very object of compromise is to avoid the determination of sharply contested and dubious issues." *White* at 1417 (internal quotations and citations omitted). Thus, the court should not generally proceed beyond "an amalgam of delicate balancing, gross approximation, and rough justice." *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 468 (2d Cir. 1974), cited in *Officers for Justice* at 625.

THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

This is a case which has resulted [*21] in lengthy and protracted litigation over more than two decades. This action raised claims under both Title VII and *42 U.S.C. § 1983*. Title VII was intended to make victims of unlawful employment discrimination whole. *Franks v. Bowman Transportation Co.,* 424 U.S. 747, 764, 96 S. Ct. 1251, 1264, 47 L. Ed. 2d 444 (1976). The act provides back pay and injunctive relief to victims of discrimination to the wage and employment positions they would have occupied absent discrimination. However, Congress declined in that statute to recompense victims for any of the other traditional harms associated with personal injury, such as pain and suffering, emotional distress, harm to reputation or other consequential damages. *United States v. Burke,* 504 U.S. 229, 112 S. Ct. 1867, 119 L. Ed. 2d 34 (1992). *Section 1983* of Title 42 under which the class action has also been maintained does allow for an award of consequential damages in such amount as a jury or other trier of fact may reasonably find based on the evidence. *Memphis Community School Dist. v. Stachura,* 477 U.S. 299, 106 S. Ct. 2537, 91 L. Ed. 2d 249 (1986); *Webb v. City of Chester,* 813 F.2d 824, 836 (7th Cir. 1987). Plaintiffs [*22] bear the burden of proof on the issue of damages. *Long v. T.W.A.,* 761 F. Supp. 1320, 1330, n. 14 (N.D. Ill. 1991).

Important to an evaluation of this settlement for money damages is the recognition that this is a case where the evils of discrimination against the class have already been remedied by orders for injunctive relief. These orders have been fully implemented by the City. Retroactive seniority has been established and implemented for the hiring subclass. All that remains is the award of monetary relief to the class members. [7] This relief was ordered in 1991, and the parties and the court have been diligent in seeking to determine a method for a fair award to each class member. Nevertheless, no awards have yet been made and the court has made no final determinations of the amounts. The only person who has benefited monetarily through

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[7] Early on, the court ordered that the attorney fees of plaintiff counsel be paid periodically by the City and this practice has been continued throughout the litigation. Thus, there are no attorney fees at issue in the settlement and with the court's acceptance of the consent judgment, the case will be closed and the order for payment of attorney fees should be terminated.

this action as of this date is plaintiff's counsel, whose fees have been regularly submitted to defendant City and paid by taxpayers of the City of Detroit for years pursuant to court order. This is a case where discrimination has been remedied, monetary damages are available, and finality is essential. Termination of the lawsuit brings about [*23] not only finality, but also substantial justice. Approval of the settlement is in the paramount interest of the class, the court, and the public.

1. *The risks of further litigation.*

Both sides face numerous risks in going forward with this litigation. Defendants have been previously held liable for past discriminatory practices and been enjoined from them. However, the City bears significant monetary risks in continuing to absorb the financial costs of this litigation, payments which will not reduce its obligation to pay damages due class members. A great number of hours have already been put forth by the City's accountants and personnel [*24] officers in calculating the individual damage awards for the hiring subclass and further efforts will be required if the litigation continues.

Plaintiffs bear significant risks in continuing the litigation as well. Class members would face substantial obstacles and uncertainties in proving damages. Despite determinations for liability, plaintiffs have not yet proved their tort-like, non-economic damages at a trial. Plaintiffs bear the burden of proving their damages. While the issue of back pay has been referred to the magistrate judge, neither counsel for the City nor counsel for the plaintiff class has agreed to be bound by the determination of the magistrate judge. Neither party has agreed to be bound even to a formula or method for review by a finder of fact. Further litigation would also likely ensue on the amounts of mitigation. Currently, social security earnings are the only items considered as offsets in mitigation. However, defendant would have the right--indeed, given the public nature of the defendant, the duty--to obtain additional information regarding earnings not subject to social security records. These would include wages not subject to social security, such as for [*25] teaching or state employment, worker's compensation payments, and welfare payments, as well as other sources of income. Seeking this information for individual class members may involve review of original applications, tax returns, depositions, and other documents. Failure to mitigate may result in loss of a portion of the back pay due the individual. The issue of the weight, if any, to accord college attendance during the relevant time period has also not been determined by the court. Inability to work during the relevant period of unemployment due to pregnancy or other circumstances remains an issue for some class members. No determination of the rate of interest or the date on which it should begin to run has been made by the court. Various dates with respect to interest are possible and plaintiffs and defendant have urged different dates. This dispute would need to be litigated. Upon the filing of objections to the Report, the magistrate judge's determination would have await review by the district judge. The issue of the appropriate method for determining tort-like damages on the *§ 1983* claims has not been litigated or even addressed by the court. No procedures for trial(s) or [*26] decisions or what would be admissible evidence for this phase of the litigation has been made.

Both plaintiffs and defendants risk the delay and potential reversal of any determination made in litigation with respect to damages.

2. *The benefits to the class.*

The class receives substantial benefits through the settlement agreement. Initially, it should be noted that monetary relief is only a portion of the relief awarded the class. The injunctive relief, actual hiring and promotion, and adjusted seniority has already provided significant benefit to class members. The adjusted seniority dates, ultimately stipulated to by the City, are available to the hiring subclass for all purposes including retirement and pension credits. It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not render the settlement inadequate or unfair. *City of Detroit v. Grinnell,* 495 F.2d 448, 455 (2d Cir. 1974). This is particularly true in cases where monetary relief is but one form of the relief requested by the plaintiffs. It is the *complete* package taken as a whole, rather than the individual component parts, that must be examined for overall [*27] fairness. *Officers for Justice,* 688 F.2d at 628. As noted in that case:

> Viewed in proper perspective, then, the amount of back pay finally agreed upon is a less significant consideration than [the objector] would have us believe. Moreover, it can hardly be maintained that back pay was the predominant remedy sought in this lawsuit. . . . Throughout the lengthy history of this case, the primary concern of the plaintiffs was to halt the allegedly discriminatory practice and to assure the future integration of minority and women into the S.F.P.D.. . . defendant bound themselves to comply with a broad range of both restricted and affirmative mandates covering every act, practice, policy or custom addressed in the plaintiff's complaint. To this was added a grant of back pay, which is substantial, though potentially less than complete in some instances.

> Undoubtedly, the amount of the individual shares will be less than what some class members feel they deserve but, conversely, more than the defendants feel those individuals are entitled to. This is precisely the stuff from which negotiated settlements are made.688 F.2d at 628.

This monetary settlement provides for [*28] a damage award which is both significant to the City and meaningful to the class. The amount of the settlement is sufficient to provide for both back pay and non-economic damages to each plaintiff.

3. *Complexity, expense and likely duration.*

As discussed above, litigating the resolution of the damages issues would be extremely complex, expensive, and protracted. Some indication of the time and resources needed to prepare and resolve a trial or factual determination on the damages issues may be gleaned from fees previously paid by the City, which currently total over one million dollars. (Tr. 28) Many courts which have approved the settlements of similar cases have noted that trials on damages issues can be lengthy, costly and almost overwhelming. See, *White v. NFL,* 822 F. Supp. 1389, 1420 (D. Minn. 1993). The track record for large class action employment discrimination cases demonstrates that many years may be consumed by trials and appeals before the dust finally settles. *Cotton,* 559 F.2d at 1331. Many of the tangible benefits accruing from any damage award would be lost and the usefulness of the awards to the individuals substantially diluted by the delay inherent in [*29] acquiring them.

4. *Class counsel and class members believe that the settlement is reasonable.*

Counsel for the plaintiff class made a written demand for $ 10.8 million dollars. This offer was accepted by the City. Both sides recognize the reasonableness of the settlement and have actively balanced the factors in reaching a fair number. Class members were informed of the terms of the settlement and, other than a few individuals who questioned the specific calculations of their back pay, no serious objections were made by any class member. Indeed, several individuals wrote to the court expressing their appreciation that a settlement had finally been reached and that an end to the litigation was in sight. The class representatives who negotiated the settlement had concerns about two issues which arose after the settlement
negotiations with respect to distribution. These are discussed in more detail later in this Report. However, despite these concerns, each class member will still receive the full amount of economic damages which were negotiated and an equal share of the residuary. The amount of settlement allows for complete relief to all class members, and fully comports with the [*30] terms of the settlement as set forth in the Notice sent to all class members of the fairness hearing.

5. *Extent of discovery completed and the state of the proceedings.*

A significant amount of discovery has been completed. Class members have been fully identified. The amount of back pay for the class is based on fully discovered dates and rates of pay. The amount due has been calculated for each member. Each person and the class as a whole is well equipped to evaluate the settlement and the individual awards. No further discovery is necessary to settle. Further discovery would be needed only to litigate, to dispute particular amounts of mitigation, and to litigate whatever personal injuries may have resulted from the discriminatory conduct. The additional discovery and the delay is not justified by the potential change in the outcome.

6. *Settlement is not the product of fraud and collusion.*

The litigation has been aggressively conducted by both sides in this case. Settlement has been suggested on many occasions but was not able to be effectuated until each side had a clear understanding of the general amounts of individual awards. When that was accomplished, a realistic [*31] settlement offer was made by the plaintiffs and accepted by the City. The class representatives worked diligently to calculate individual dates of employment, days worked, and amounts due. The class representatives worked extremely carefully to ensure that each individual award was correctly calculated, that each person was included, and the settlement was a fair one. Upon the court's approval of the settlement, monetary awards for which these women have waited several years will finally be distributed. [8]

7. *Method of distributing the settlement funds is fair and reasonable.*

Checks to each class member will be prepared and distributed to each class member, based on addresses previously obtained. The City will be responsible for preparing and distributing checks for all class members who are still employed or who are receiving pensions from

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[8] Although plaintiffs' counsel will no longer be receiving fees, resolution of this case will undoubtedly provide relief to all the lawyers as well.

the City. Plaintiffs' [*32] counsel agreed, reluctantly, to take responsibility for distribution of checks to the remaining members if ordered to do so by the court. The court has prepared a computerized list of class members and amounts and will make the list and the software available as needed. All class members who have back pay awards are known and have current addresses. To the extent that some members receiving non-economic damages are unable to be located, their share of the residuary will be held for a reasonable period of time and the class representatives have agreed to donate the unclaimed shares to a charitable organization.

SUMMARY OF THE SETTLEMENT

The terms of the settlement are set forth in detail in the Notice, which is incorporated by reference. The settlement provides for both economic and non-economic damages. [9] The economic damages consist of back pay and an increase for interest on the back pay. The non-economic damages consist of the residuary of the amount requested by each subclass divided by the number of class members. [10] [*33]

SETTLEMENT ISSUES AS TO PROMOTION AND COMPENSATION SUBCLASS

There are no unresolved issues with respect to this subclass. The promotion and compensation subclass has calculated its individual awards and there is no dispute or disagreement as to any of them. The back pay amount has been calculated based on a formula similar to that of the hiring subclass. Calculation and determination was done by the subclass representatives themselves, based on information supplied by the City. The subclass membership and periods of eligibility were determined based on personnel record cards supplied by the defendant. "Mandays" [11] worked were calculated for each subclass member. The number of mandays worked each fiscal year was multiplied by the annual daily salary [*34] differential between men and women officers. Annual salaries were taken from data supplied by the City's attorney. Premium pay and a figure representing interest was calculated and added to the back pay. This amount became the total economic award for the class. The difference was divided among the entire subclass based on mandays worked and allocated as non-economic damages. The complete method is set forth in the Plaintiffs' Statement Supporting Proposed Allocation of Settlement Among Promotion and Compensation Subclasses.

SETTLEMENT ISSUES AS TO HIRING SUBCLASS

The hiring subclass ultimately requested five [*35] million dollars to settle the case. In negotiations, the hiring subclass based their number on back pay for each subclass member as determined by the previously implemented formula, 25 percent of that amount added as interest, and the remainder divided into equal shares as non-economic damages. [12] The settlement took into account that at a jury trial on the *§ 1983* claims at sometime in the future, a jury could award damages to the plaintiffs "to compensate persons for injuries caused by the deprivation of their constitutional rights." *Carey v. Piphus,* 435 U.S. 247, 254, 55 L. Ed. 2d 252, 98 S. Ct. 1042 (1978). The hiring subclass agreed that this amount should be the same for settlement purposes for each plaintiff, as it related to the discrimination as a result of failure to be hired, and each suffered the same discrimination in not being hired. In addition, because of other employment, the back pay awards varied widely and an equal amount for non-economic damages enhanced the equality among subclass members.

[*36] 1. *Entitlement of the 94 members who failed to return their social security earnings form.*

Plaintiffs' counsel originally proposed its settlement offer based on the fact that the 94 plaintiffs who failed to respond to the social security earnings request form would get no money. These forms had been mailed to the last

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[9] While non-economic damages would not be permissible under Title VII, plaintiffs could be entitled to some amount of money as damages to compensate for the personal injuries if the *§ 1983* claims were tried. Although liability has been established by partial summary judgment, no trial has yet been held in this matter. No determination of the appropriate amount of damages has been made by any court.

[10] There are 24 individuals who are members of both the hiring subclass and the promotion/compensation subclass. These persons have agreed to take no share of the non-economic damages allocated to the hiring subclass. Thus, the residuary of the five million dollars is to be divided into equal shares based on the number of members less 24.

[11] This term is that used by the plaintiffs and is apparently used without reference to gender. The relative length of "woman-days" v. "mandays" is a subject of debate beyond the scope of this Report. The term as used here means the daily rate of pay for a police officer employed by the City during the relevant period of time, regardless of whether the day was worked by a man or woman officer.

[12] In October, 1994, the class representatives estimated the amount to be $ 2500 per plaintiff for non-economic damages. However, the notice of proposed settlement did not specify any particular amount and no firm number was ever agreed upon.

known addresses of the individuals provided by both counsel, and the information and letter had been posted and published in the union newsletter with requests to contact Mr. Runyan. The letter dated June 10, 1993, requesting social security information had advised the recipient that the information would be used to reduce the amount due to them, i.e., as an offset against back pay. The letter also indicated that failure to return the form would preclude the pursuit of a claim for back pay in the case. [13] Some of the forms were returned as undeliverable. Consequently, the court concluded that these individuals had no interest in pursuing their claims, as they had not kept their counsel informed of their address and/or were unable to be located. The magistrate judge believed that these plaintiffs could not be found or had no interest in the case and issued a Report [*37] and Recommendation on December 29, 1994, recommending that those 94 individuals be dismissed for failure to prosecute their claim.

After the Report and Recommendation was issued, the question arose of whether or not these 94 should receive notice of the proposed settlement. The City, while not taking a position with respect to distribution of the settlement, believed that these 94 women should receive the notice of the fairness hearing.

To the court's surprise, on January 5, 1995, plaintiff's counsel informed the court that he knew the whereabouts of some of the 94 persons and might be able to locate others. In light of this [*38] knowledge, since the settlement arguably would encompass claims in addition to back pay, and at the request of both counsel, the court issued an Amended Report and Recommendation approved as to form and content by all counsel on the record. That Report recommended that those 94 plaintiffs be held ineligible only with respect to claims for back pay. However, they remain eligible for a residual share of the non-economic damages. [14]

2. *Awards to the "discovered" 30 subclass members.*

After the notices had been approved and mailed, at one of the final organizational hearings in early February, 1995, plaintiff's counsel and counsel for the City advised the court that 30 members of the hiring subclass had been inadvertently overlooked by plaintiffs and the City. These individuals had returned [*39] the social security forms, and both sides had reason to know of their existence. Calculation of their back pay had not been prepared by the City and neither the plaintiff representatives nor plaintiff's counsel had brought this to the City's attention. [15] Without fixing the blame, counsel agreed and the court determined that these individuals were entitled to notice of the fairness hearing and a share in the settlement for back pay and for non-economic damages. Notices were mailed to these 30 plaintiffs the same day.

3. *Additional money for the hiring subclass.*

At the hearing, Officer Whitty, one of the hiring subclass representatives, asked for an additional $ 226,000 to compensate for the additional [*40] 30 members whose damages the representatives did not take into account in determining the amount requested as settlement. No formal motion or petition was made to the court. The formal settlement offer made by the class through its counsel and accepted by the City is $ 10.8 million dollars. This is a fair, many would even say, generous amount. Because of the additional 30 individuals due back pay, the amount of the residuary available for non-economic damages is reduced. However, following the discovery of the additional 30 plaintiffs, the 24 individuals who are members of both subclasses agreed, through the subclass representative, to forego their share of the non-economic damages to which they would be entitled as hiring subclass members. Deletion of these individuals leaves a larger residual share for each remaining member. The amount available for non-economic damages per class member before the "discovery" of the additional 30 members was $ 2,154.05. Inclusion of the thirty additional members and opt-out by the 24 individuals who were members of both classes, and the resulting change in the residuary, would leave $ 1,908.18 per class member available for non-economic damages. This [*41] difference of $ 245.87 per plaintiff is not grounds to set aside the settlement. Even if additional back pay awards are made, the resulting residual share is still reasonable. In addition, the settlement was not negotiated on the basis of a firm figure per person for non-economic damages. The

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[13] The letter did not mention non-economic damages. The only issue before the court at that time was the amount of the back pay. During settlement negotiations, plaintiffs began to discuss non-economic damages as well as back pay. The settlement was intended to encompass both economic and non-economic damages, taking into account all claims, including those under Title VII and *§ 1983*.

[14] Some of these 94 individuals advised the court after receipt of the Amended Report and Recommendation that they had returned the social security forms. These corrections were made and their non-economic damages included.

[15] Unlike the Promotion/Compensation subclass which calculated their own back pay, the City had done the work to determine individual back pay for each class member. The lists were reviewed by the hiring subclass representatives and plaintiffs' counsel, who also overlooked the exclusion of these 30 women.

non-economic damages were to be equal shares of the residuary. Only the few committee members had any idea what that amount would be. Not one class member outside the committee has objected to the settlement on the grounds that the non-economic damages are too little.

The nature of a class action settlement is not a sum of individually negotiated awards. Here, an individualized amount of back pay was calculated for each class member and an amount of interest was added. That amount is awarded *in full* to each class member. The "non-economic" damages permitted under *42 U.S.C. § 1983* are the most speculative portion of damages and the least susceptible to any precise mathematical calculation. No evidence, discovery, ruling, or trial has been held on this claimed entitlement. Lacking a fully developed evidentiary record, no court, plaintiff, lawyer, or other person can say whether $ 2500, $ 1000, [*42] $ 100, $ 1 or some other amount is the proper number to award as non-economic damages. The settlement of $ 10.8 million dollars provides each class member the full amount of back pay individually calculated and interest on that amount. The dispute regarding the amount of the additional share over and above the back pay is not reason to set aside the settlement reached by class counsel. [16]

[*43] **SETTLEMENT ISSUES AS TO INDIVIDUAL OBJECTORS**

Some individuals wrote in support of the settlement and the final resolution of the case. Some disagreed with the particular amount calculated for them as back pay, some indicated that the writer felt she should have been a class member, and one disagreed with the formula for settlement.

1. *Claims to readjust seniority and inclusion in class membership.*

At the hearing, three individuals raised issues regarding their inclusion in the class and the dates of their seniority. Ms. Evans, a member of the hiring subclass, appeared with her lawyer, Mr. Portney. (Tr. 58) She requested a review of her seniority dates. (Tr. 55) Ms. Evans was granted retroactive seniority as of her April 1, 1975 application. She was hired in 1977 after she completed her academy training. She contends that the delay in her admittance to the academy is based on discrimination. She was hired in a shorter period of time than male officers who applied during that period, and the master determined that she suffered no discrimination. As discussed above, previous orders of the court and the special master have determined who is an eligible class member and their [*44] seniority dates. Admittance to the academy is not an issue in this action.

Ms. Lorraine Demps also requested adjustment of her seniority date to reflect pre-application seniority. She is receiving an award of both back pay and non-economic damages. (Tr. 65) She also filed a written objection. Her request for review comes too late. The court allowed review of the special master's findings several years ago. She is barred from asking for further review now. (Tr. 62)

Ms. Dannine Harvey attended to protest her seniority date. (Tr. 70) Such dates have already been reviewed by the court following the special master hearings. As Mr. Runyan noted, Ms. Harvey's situation is much like Ms. Evans. Her adjusted seniority date takes into account layoffs that were occurring in 1975 and 1976 and the average processing time for males who applied during the same quarter calendar year she applied. (Tr. 73) She did not respond to the notice indicating that she could apply to the special master for a determination of pre-application seniority.

Ms. Sharon Drew spoke to protest her adjusted seniority date, which gave her six months seniority, and stated that she had a closed head injury at the time of [*45] appeal of the special master hearing. She stated that she applied in January, 1973, and that the application with a date of January, 1974, had been tampered with. (Tr. 80-81) Mr. Runyan noted that a great deal of effort was made to individualize all the relief in this case and Ms. Drew's claim that six months was given arbitrarily to anyone who did not respond is not supported by the record. In addition, Mr. Runyan noted that anyone who wished to pursue a claim for pre-application seniority had an opportunity to do so, during the period from 1980 to 1985. (Tr. 83) He also noted that she took the exam on June 8, 1974, a date more consistent with a January, 1974 application than a January, 1973 application, and that given her date of birth, March 31, 1955, she would not have been the required age of 18 if she had applied in January, 1973.

Written comments were received from several individuals along similar lines. Ms. Donna Cotton wrote to state that she should receive money as a member of the promotion

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[16] To the extent that the class wishes to distribute additional money to hiring subclass members, such amounts could be taken from the residuary of the promotion/compensation subclass. Approximate calculations show that subtracting the additional amount for non-economic damages desired by the hiring subclass would reduce the promotion/compensation subclass non-economic damage award per member from $ 10.35 per day to $ 8.37 per day. However, it should be clear that such change is not mandated nor required in order to sustain the fairness, reasonableness and adequacy of the settlement. It is merely a suggested modification if the class so desires.

/compensation subclass. Ms. Cotton was hired October 8, 1973. She is receiving back pay and non-economic damages as a member of the hiring subclass. The promotion/compensation subclass [*46] is limited to all women who were employed after April 10, 1970, and assigned to the women's division before August 1, 1973. (Tr. 18-19) Ms. Cotton does not fall into that group.

A few other individuals who are or were members of the police department wrote to seek inclusion as a plaintiff. However, the class has previously been defined and no one who wrote meets the terms for inclusion.

2. *Individuals who were never hired.*

Two individuals alleged that they should be class members for the purposes of settlement. These individuals have received the benefit of the injunctive relief ending the discriminatory practices. However, they were not hired and are not included in the settlement for back pay. Ms. Sally Joan Mobley-Adams requested to be considered a class member because she was never hired by the police department. She stated that she filled out an application, completed a physical, and was told that they would get back with her. (Tr. 66) Mr. Runyan advised that until he received her comments on the proposed settlement, he was not aware of any individuals who had been discriminated against in hiring but had not been subsequently hired. (Tr. 68) Although a substantial amount [*47] of publicity attended the earlier injunctive orders, Ms. Adams indicated that she never heard of anything about this case until the newspaper article in the paper in 1995. To the extent that she has a claim, her claim comes too late. All class members have been earlier identified and ordered hired. Members entitled to economic relief following determinations of adjusted seniority dates have also been previously identified.

Ms. Vernita Hurst made a statement similar to that of Ms. Adams. She said that she applied with the police department in 1973 and again in 1983. (Tr. 84) She later stated that she may have reapplied in 1975. (Tr. 89) She said that in 1983, in connection with her application, she had been tested by a psychologist and he tried to "bribe" her. He told her that she would have to go down the street and have an examination by a psychologist friend of his for $ 125 and then he would determine whether she would be a police officer. She became extremely upset and left the office, without taking any other exam. Her husband is a police officer with Detroit Police Department and has been since 1971. She talked to the Police Department about the incident with the psychiatrist, [*48] but was never aware of this class action and believes that she should be eligible to participate. As previously discussed, the end of the discriminatory hiring practices ordered as injunctive relief is her benefit as a female member of the public interested in being a police officer. Her claim with respect to the 1983 failure to hire is outside the scope of this lawsuit.

3. *Failure to return social security form.*

Ms. Archela Johnson appeared on behalf of her daughter Carolyn Green who died of leukemia in 1991, while a police officer. (Tr. 59-61) Neither Ms. Green nor anyone representing her estate advised the class counsel Mr. Runyan of her death. Although Ms. Johnson got the Notice of the Proposed Settlement, she stated that she did not get the other mail about returning the social security form. Ms. Green was a class member, had previously been awarded retroactive seniority by the special master, and was one of the 94 individuals who failed to return the social security earnings form. She would be entitled to a share of the residuary as non-economic damages in the same manner as the other class members. However, Ms. Johnson's representation that she did not receive other mailings [*49] is not cause to treat Ms. Green differently from the other class members who will share only in the residuary.

Ms. Susie Bankhead, who is receiving a pension from the department, stated at the hearing and in writing that she did not receive the social security earnings form, and requested that she be allowed to claim economic damages for back pay. She did receive her pension and the Amended Report recommending that economic damages be precluded for those members not returning the social security form. All these were mailed to the same address, the address where she has lived since retiring in 1987. (Tr. 79) In addition, notice indicating that the court was requesting social security forms was provided in the union newsletter. There is no showing that Ms. Bankhead was denied due process in pursuing her claim for economic damages and the determination that those individuals would share only in the non-economic damages should stand.

A few individuals also requested inclusion for economic damages alleging that they had failed to receive the social security earnings form. Given the efforts at individual notice and publication to the class, this claim is not sufficient to set aside the [*50] settlement.

4. *Calculation of individual awards.*

Ms. Patricia Hardaway objected in writing and at the hearing to the calculation of her award, alleging that the social security earnings used as an offset was not earned evenly throughout the year and that she is entitled to an additional 42 days of pay. (Tr. 774-7) Quarterly earnings records are not available because the income at issue was earned so long ago. Since only annual earnings were available, the class members utilized a formula which

postulated that these earnings were earned evenly throughout the year. Ms. Hardaway suggested that TRW statements and other information be utilized so that an exact calculation could be made for each member. It is not shown that such information would be available. Even if it should be, the delay and expense in further individualized calculations was determined by the class to be outweighed by the ability to have a current distribution of monetary awards. This is an eminently reasonable approach given the age of the case and the number of class members.

Ms. Patricia Jackson requested clarification of the method of calculating offset amounts. Mr. Runyan explained that the amount of offset [*51] was pro-rated equally throughout the year, so that if the individual were hired in June, only half of the yearly earnings would have been used as an offset. In Ms. Jackson's case, she was given 57 days of back pay for 1976. Only that fraction of her earnings was used as an offset. (Tr. 102)

Subsequently, Ms. Darlene Culp advised that her offset was improperly calculated because she was hired as a police officer with C.E.T.A. funds and as such her salary was subject to social security earnings. (Letter of John Runyan, 3/6/95) Insufficient facts are presented to determine the outcome, but to the extent that offsets may include amounts earned as a Detroit Police Officer, the awards should be reviewed. [17]

Vanice Daniels wrote to request recalculation of her award. The award formula takes into account that the actual number of working days for [*52] a police officer is fewer than 365 days per year. The parties were instructed to review all questioned awards for clerical errors. If such errors have been made, counsel is directed to provide corrected information in the final distribution list for attachment to the consent judgment.

5. *Pension entitlement.*

Mr. Stanford Sulkes spoke on behalf of his deceased wife Barbara, who died of breast cancer in 1982 while a police officer. He stated that he believed that retroactive seniority determinations made after her death should have been reflected in retroactive pension increases for her heirs. He stated that he recognized that this would not benefit him to a great degree, as he remarried a year later. However, her three children received pension benefits based on what a patrolman would have received and they should have received at the rate of sergeant. They received this pension until they were 18; they are now 19, 22, and 23. (Tr 99) However, the pension board is not a party to this class action and cannot be ordered to make retroactive adjustments in this settlement.

6. *Written comments.*

The court received several written comments, some of which have been addressed earlier [*53] in this Report. Only one letter objected to the overall distribution as proposed. This was from plaintiff Maggie Drake. Ms. Drake, now a Recorders Court judge, did not participate as a class representative. The distribution arrangement presently in place meets all of the legal criteria and is fair, reasonable, and adequate. While Judge Drake's proposal may be as well, it is not grounds to set aside the settlement.

The remainder of the letters fall into categories previously addressed. One group requests recalculation of individual awards based on clerical errors. Counsel has reviewed and will correct any errors in the final list of amounts for distribution. A second group seeks inclusion in class membership. A third group seeks review of adjusted seniority dates.

Several letters commended Grace Schaefer on her willingness to stand up for her rights and those of other women and her efforts to end gender-based discrimination. Several letters commended the court and the litigants for reaching a settlement and bringing the lawsuit to a close. One letter deserves special mention, that of Grace Schaefer, the named plaintiff. Now 62 years old and living in California, Ms. Schaefer's letter [*54] is quoted because the magistrate judge finds that it tells the tale of this lawsuit more eloquently than could any judicial officer reviewing the file. Ms. Schaefer started in the Women's Bureau (WB) in 1964. She was 33 years old and had left her nursing career which she had pursued for 10 years. She tried to transfer out of the Women's Bureau but was always denied the transfer. She was told it was because she did not wear "boots and breaches or storm the hill." She was told that Homicide was "too gory." She filed this lawsuit which resulted in her falling into great disfavor. She was removed from the court section and put back into investigation in the WB. A male supervisor in the WB told her that he would make sure she was never transferred or promoted. Shortly thereafter, she left, realizing that, for her, the Detroit Police Department would be a dead end. However, because of her lawsuit, the court and the City made the changes needed for women. Ms. Schaefer's courage, her persistence, and her efforts in the cause of equal justice under law serve as an inspiration for the women who follow her. Ms. Schaefer's lawsuit is and always has been about ending discrimination. Money damages [*55] may compensate, but, as Ms. Schaefer states "greed need not reign."

THE CLAIMS OF THE INDIVIDUAL OBJECTORS DO NOT WARRANT DISAPPROVAL OF THE SETTLEMENT

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[17] A larger economic award for this or any other plaintiff would, of course, have the effect of reducing the residuary available for distribution as non-economic damages.

The magistrate judge finds that none of the objections or concerns warrant disapproval of the settlement. It is well established that the ultimate issue the court must decide at the conclusion of the fairness hearing is whether the settlement and resulting consent decree are fair, reasonable, and adequate. The court has no occasion to determine the merits of the controversy or the factual underpinning of the legal authorities advanced by the parties. *Williams v. Vukovich,* 720 F.2d 909, 921 (6th Cir. 1983). The issues raised by the objectors must be viewed, not in isolation, but in connection with the entire agreement proposed by class counsel and accepted by the City. This agreement includes not only the recent resolution of monetary issues, which provide for full back pay with interest and for non-economic damages, but also the previously granted significant injunctive relief advocated by plaintiff's counsel, ordered by the court, and agreed to by the City.

RECOMMENDATION

Accordingly, the magistrate judge recommends [*56] that the settlement be accepted and approved by the district judge on the grounds that it is fair, reasonable, and adequate to the class as a whole and that the distribution to individual members is in accordance with equitable principles designed to provide relief for the past discriminatory practices of defendant City. It is further recommended that all objections be overruled and that counsel be ordered to present to the court for its signature a consent judgment incorporating the terms of this settlement, including a list of individual class members with amounts due under the terms of the previous notice. It is further recommended that following the entry of the consent judgment, the court direct distribution of the amounts due each class member to be made by counsel and certification of the same to be filed with the court within 90 days of the date the judgment is entered. It is further recommended that upon entry of the consent judgment, the case be closed and the order for payment of plaintiff's counsel attorneys fees by the defendant City be terminated.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within [*57] ten (10) days of service of a copy hereof as provided for in *28 U.S.C. § 636(b)(1)* and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn,* 474 U.S. 140, 88 L. Ed. 2d 435, 106 S. Ct. 466 (1985); *Howard v. Secretary of HHS,* 932 F.2d 505 (6th Cir. 1991). Filing of objections which raise some issues, but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Smith v. Detroit Fed'n of Teachers Local 231,* 829 F.2d 1370, 1373 (6th Cir. 1987); *Willis v. Secretary of HHS,* 931 F.2d 390, 401 (6th Cir. 1991). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than five (5) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

[*58] VIRGINIA M. MORGAN

UNITED STATES MAGISTRATE JUDGE

Dated: APR 17 1995