

Carter v. Gallagher

United States District Court for the District of Minnesota, Fourth Division.

April 6, 1972.

No. 4-70 Civ. 399.

Reporter: 1972 U.S. Dist. LEXIS 14309; 9 Fair Empl. Prac. Cas. (BNA) 1191; 4 Empl. Prac. Dec. (CCH) P7853

Gerald Carter et al., Plaintiffs, Minneapolis Commission on Human Relations, Plaintiff-Intervenor v. Hugh Gallagher et al., Defendants.

Opinion by: [*1] LARSON

Opinion

LARSON, D. J.: On the basis of the records and the proceedings herein, and in accordance with the judgment of the United States Court of Appeals for the Eighth Circuit entered pursuant to the decision of that Court dated September 9, 1971 and January 7, 1972, it is the Order, Judgment, and Decree of this Court:

1. That the Decree of this Court dated March 9, 1971 is vacated.

2. That the defendants herein, their successors in office, agents, and employees and all persons in active concert or participation with them shall give preference in employment as fire fighters with the Minneapolis Fire Department in accordance with the procedure set forth in paragraph three (3) of this Decree to twenty (20) Black, American-Indian, or Spanish-surnamed-American applicants for that position who qualify for such employment on the basis of the requirements stated in Minneapolis Civil Service Commission Fire Fighter Examination Plan Number 8326 or subsequent Fire Fighter Examination Plans which shall in the future be adopted by the Minneapolis Civil Service Commission, as modified in accordance with further provisions of this Decree.

3. That the defendants herein, their successors [*2] in office, agents, servants, and employees, and all persons in active concert or participation with them shall

(a) establish an eligibility list (hereinafter referred to as Eligibility List A) of all Black, American-Indian and Spanish-surnamed-American applicants for the position of fire fighter with the Minneapolis Fire Department who qualify for such positions on the basis of the examinations given pursuant to the Minneapolis Civil Service Commission fire fighter examination plan number 8326 and who meet the requirements of said examination plan as amended pursuant to paragraph seven (7) of this Decree; and

(b) rank said minority applicants in order of their relative standing on said examinations with those persons eligible for

(c) in accordance with the usual Civil Service procedures, establish an eligibility list (hereinafter referred to as Eligibility List B) of all applicants for the position of fire fighter with the Minneapolis Fire Department who qualify for such positions on the basis of the examinations given pursuant to the Minneapolis Civil Service Commission fire [*3] fighter examination plan number 8326 and who meet the requirements of said examination plan as amended pursuant to paragraph seven (7) of this Decree; and,

(d) in the event that certification of fire fighters from Eligibility List B in accordance with usual Civil Service procedures would have the effect of actual certification of a number of persons who are also listed on Eligibility List A which is equal to or greater than one-third of the total number of persons being certified at that time, the total number of persons being certified as fire fighters at that time shall be certified from Eligibility List B; and

(e) in the event that certification of fire fighters from Eligibility List B in accordance with usual Civil Service procedures would have the effect of actual certification of a number of persons also listed on Eligibility List A which is less than one-third of the total number of persons being certified at that time, certification shall be made by certifying first the highest ranking person from Eligibility List A and then certifying the two highest ranking persons on Eligibility List B who are not listed on Eligibility List A and continuing in that manner until the requisite [*4] number of persons are certified; and,

(f) in the event that a total of twenty persons listed on Eligibility List A are certified for employment as fire fighters pursuant to Fire Fighter Examination Plan 8326, whether in accordance with subparagraph (d) or (e) of this paragraph, subsequent certification of fire fighters may proceed in the usual manner; and,

(g) in the event that a total of twenty persons listed on Eligibility List A are not certified for employment as fire fighters pursuant to Fire Fighter Examination Plan 8326, the procedure detailed in this paragraph shall be followed

in certification pursuant to subsequent fire fighter examination plans until such time as a total of twenty (20) Blacks, American-Indians, and Spanish-surnamed-Americans have been certified in accordance with that procedure.

4. That the defendants herein, their successors in office, agents, and employees and all persons in active concert or participation with them shall reopen the application period for hiring of fire fighters pursuant to Fire Fighter Examination Plan number 8326 for the primary purpose of receiving applications from Blacks, American-Indians, and Spanish-surnamed-Americans for [*5] a period of no less than two weeks to commence as soon as is reasonably possible upon the completion and implementation of the affirmative recruitment program required pursuant to paragraph five (5) of this Decree.

5. That the defendants herein, their successors in office, agents, servants, and employees, and all persons in active concert or participation with them,

(a) shall prepare and submit to the Court and counsel for the plaintiffs and the plaintiff-intervenor no later than two weeks from the date of this Decree a plan for affirmative action for the recruitment of Black, American-Indian, and Spanish-surnamed-American applicants for the position of fire fighter with the Minneapolis Fire Department, which plan shall include:

(i) Provision for the active participation in such affirmative recruitment program of all the defendants in this action, including their successors in office, and,

(ii) Provision for consultation by the defendants herein and members of the staff of the Minneapolis Civil Service Commission with named representatives of named city and community agencies and groups which have direct contact with the minority community in Minneapolis, and,

(iii) Provision [*6] for pretest tutoring sessions involving personnel from the Civil Service Commission staff and from the Minneapolis Fire Department, and,

(iv) Provision for the maximum feasible use of all communication media most likely to reach the minority community in Minneapolis, and,

(v) Incorporation in the promotional material used, including all advertising used, of a clearly worded statement summarizing the procedures for certification set forth in paragraph two (2) and three (3) of this Decree, a statement regarding all changes made in examination plan number 8326 as set forth in paragraph seven (7) of this Decree, and a statement regarding the availability of pretesting tutoring sessions established pursuant to paragraph 5(a)(iii) of this Decree; and,

(b) shall implement said affirmative recruitment plan, subject to any modifications which may be ordered by the Court after due notice has been given to them, in the recruitment of fire fighters pursuant to Fire Fighter Examination Plan 8326.

6. That the defendants herein, their successors in office, agents, servants, and employees, and all persons in active concert or participation with them, shall not give examinations pursuant to [*7] the Minneapolis Civil Service Commission Examination Plan 8326 until the following action has been taken:

(a) The written examination for fire fighter with the Minneapolis Fire Department given pursuant to said examination plan has been validated by procedures commensurate with those set forth in the Equal Employment Opportunity Commission Guidelines on Employment Testing Procedures set forth in 35 F.R. 12333, et seq. (Aug. 1, 1970), 29 C.F.R. §§ 1607.1 to 1607.14; and,

(b) Within two weeks of the date of this Decree counsel for the plaintiffs and the plaintiff-intervenor shall be provided copies of said written examination for fire fighter with the Minneapolis Fire Department and copies of all reports, including a resume of any oral reports, which are made by defendants, their employees, or any consultant working with them, regarding validation studies of said written examination, provided that such copies of said written examination and such copies of said reports may be given to the Court and counsel for the plaintiffs and the plaintiff-intervenor subject to a protective order in a form approved by the Court; and,

(c) Within two weeks from the date of this Decree, counsel [*8] for the plaintiff and the plaintiff-intervenor shall be provided a report containing complete test results of all persons who took examinations for fire fighter pursuant to Fire Fighter Examination Plan number 9055 EEA, which report will identify the race of said persons; and counsel for the plaintiff and the plaintiff-intervenor shall also be provided copies of all reports, including a resume of any oral reports, which are made by the defendants, their agents and employees, or any consultant working with them, regarding studies or analyses made of the results obtained on said examinations; and,

(d) Counsel for the plaintiffs and the plaintiff-intervenor have been given notice at least two weeks prior to the date scheduled for administration of said written examination, and,

(e) All action required by paragraphs four (4), five (5), and seven (7) of this Decree has been completed.

7. The defendants herein, their successors in office, agents, servants, and employees, and all persons in active concert

or participation with them, shall make the following permanent changes in the Minneapolis Civil Service Commission Fire Fighter Examination Plan number 8326 and all subsequent examination [*9] plans;

(a) Delete therefrom any reference to the applicant's arrest record, and refrain from requesting or considering any applicant's arrest record when determining the eligibility of an applicant for the fire fighter position; and,

(b) Incorporate therein a rule with respect to the consideration to be given to an applicant's conviction record, which rule shall provide at a minimum that no conviction be an absolute bar to employment, and which rule shall have been approved by this Court after no less than one week's notice to counsel for the plaintiffs and the plaintiff-intervenor; and,

(c) Delete therefrom the requirement that an applicant must have a high school diploma or G.E.D. certificate by the time he is hired, provided that an entering fireman may be required within two years of entering upon duty to obtain a high school diploma or G.E.D. equivalency certificate, and,

(d) Change the maximum age limit from thirty years to thirty-five years, provided that the maximum age may be reduced to thirty at such time as twenty Blacks, American-Indians and Spanish-surnamed-Americans have been certified pursuant to the procedures set forth in paragraph three (3) of this Decree.

[*10] 8. That the defendants herein, their successors in office, agents, servants, and employees, and all persons in active concert or participation with them, shall

(a) within six months from the date of this Decree, submit to the Court and counsel for the plaintiffs and the plaintiff-intervenor a plan for affirmative action to assure that all recruitment, examination, and hiring practices followed in obtaining employees for the Minneapolis Fire Department are designed to assure equal employment opportunities for Blacks, American-Indians and Spanish-surnamed-Americans; and

(b) implement procedures consistent with the Equal Employment Opportunity Commission Guidelines on Employment Testing Procedures set forth in 35 F.R. 13222, et seq. (Aug. 1, 1970), 29 C.F.R. §§ 1607.1-1607.14 for empirical validation of all examinations given to applicants for employment with the Minneapolis Fire Department and report in detail to the Court and counsel for the plaintiffs and the plaintiff-intervenor no less than semiannually on the progress of such validation; and,

(c) report forthwith to the Court and counsel for the plaintiffs and the plaintiff-intervenor the names of all

persons who are certified [*11] as fire fighters pursuant to Fire Fighter Examination Plan number 8326, Fire Fighter Examination Plan number 9055 (EEA), and subsequent fire fighter examination plans, specifying those persons who are Black, American-Indian, or Spanish-surnamed-American and stating with respect to all persons their ranking on the eligibility list and the date of their certification; and,

(d) report forthwith to the Court and counsel for the plaintiffs and the plaintiff-intervenor the names of all Black, American-Indian and Spanish-surnamed-American applicants who are not found eligible for certification pursuant to Fire Fighter Examination Plan 8326, Fire Fighter Examination Plan 9055 (EEA), and subsequent fire fighter examination plans, or who, after being found eligible for such certification, are not in fact certified at any time when eligible candidates are being certified, together with a statement as to the reasons for the failure to find such applicants eligible or the failure to certify them; and,

(e) report forthwith to the Court and counsel for the plaintiffs and the plaintiff-intervenor the name of any Black, American-Indian, or Spanish-surnamed-American employed as a fire fighter with the [*12] Minneapolis Fire Department who is suspended, released during his probationary period, dismissed, or who otherwise terminates his employment, together with a statement as to the reason for such suspension, release, dismissal or termination.

9. That the defendants herein, their successors in office, agents, and employees, and all persons in active concert or participation with them:

(a) shall take no action, whether pursuant to paragraph three (3) of this Decree or otherwise, to certify fire fighters with the Minneapolis Fire Department from eligibility lists created pursuant to Fire Fighter Examination Plan 8326 or pursuant to subsequent fire fighter examination plans if the effect of such certification of fire fighters would be to prevent the transfer to permanent positions of any person certified as a fire fighter under the Emergency Employment Act pursuant to orders of this Court dated January 26, 1972 and February 25, 1972; and

(b) shall, no less than one week prior to the certification of any person or persons to the position of fire fighter with the Minneapolis Fire Department pursuant to Fire Fighter Examination Plan number 8326 and subsequent fire fighter examination [*13] plans report to the Court and counsel for the plaintiffs and the plaintiff-intervenor the number of persons to be certified at that time and the number of vacancies in the Minneapolis Fire Department, together with a statement which indicates in detail the

reasons why certification of this person or these persons would not prevent the transfer to permanent positions of any person certified as a fire fighter under the Emergency Employment Act pursuant to orders of this Court dated January 26, 1972 and February 25, 1972; and,

(c) shall, upon the termination of federal funding for fire fighters hired under the Emergency Employment Act transfer all fire fighters so employed at that time to permanent positions with the Minneapolis Fire Department.

10. Nothing in this Decree shall prevent the defendants herein, their successors in office, agents and employees, and all persons in active concert or participation with them from transferring any person hired as fire fighters with the

Minneapolis Fire Department under the Emergency Employment Act to a permanent position with the Minneapolis Fire Department.

11. The Court shall maintain continuing jurisdiction of this action.

12. A [*14] copy of this Decree may be served upon the defendants herein and their successors in office; and, a copy of this Decree shall be posted in a conspicuous place accessible to the general public in the office of the Minneapolis Civil Service Commission and the Minneapolis Fire Department for a period of no less than three months after the date of this Decree.

Let Judgment be entered accordingly.