

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
NEW CASTLE COUNTY; NEW CASTLE)
COUNTY DEPARTMENT OF PUBLIC)
SAFETY; NEW CASTLE COUNTY)
POLICE DEPARTMENT; and NEW)
CASTLE COUNTY DEPARTMENT)
OF PERSONNEL,)
)
Defendants.)
_____)

CIVIL ACTION NO. 85-692-

CONSENT DECREE

The Plaintiff, United States of America, filed its complaint in this action against the County of New Castle, the New Castle County Department of Public Safety, the New Castle County Police Department and the New Castle County Department of Personnel (hereinafter collectively referred to as the Defendants) alleging discrimination in employment against women on the basis of sex in the New Castle County Police Department in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq., as amended.

FILED

The Defendants specifically deny that there has been or is discrimination in employment against women on the basis of sex in the New Castle County Police Department, and further assert that they have been and continue to be committed to a policy of equal employment opportunity for women within the New Castle County Police Department. Desiring, however, to avoid protracted, expensive, and unnecessary litigation, and sharing with the Plaintiff the goal of insuring equal employment opportunity within the New Castle County Police Department, the Defendants are willing to settle this action by appropriate decree, agree to the jurisdiction of this Court over the respective parties and subject matter of this action, and hereby waive the entry of findings of fact and conclusions of law. The parties accept this Decree as final and binding among the parties signatory hereto as to the issues resolved herein. This Decree, being entered with the consent of the Defendants, shall not constitute an admission, adjudication or finding on the merits of this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Defendants shall not engage in any act or practice which has the purpose or effect of unlawfully discriminating against any female applicant or potential applicant for employment in a sworn position with the New Castle County Police Department because of such individual's sex.

Further, the Defendants shall not retaliate against any person because of that person's participation in or cooperation with the administration of this Decree.

2. The Defendants have agreed that all training, compensation, promotional practices, job classifications and assignments, working conditions, transfers, application of seniority and all other terms, conditions and privileges of employment within the New Castle County Police Department shall continue to be maintained and conducted in a manner which does not unlawfully discriminate on the basis of sex.

3. It is an objective of this Decree that the New Castle County Police Department shall seek in good faith to achieve the employment of qualified men and women in the New Castle County Police Department to the full extent of their interest in and ability to qualify for sworn entry level positions. It is recognized that the process of increasing the number of female police officers is facilitated by a process free of unlawful barriers to their entry, by continuing recruitment efforts directed toward women, and by the use of fair and nondiscriminatory hiring procedures.

4. The Defendants agree to maintain and enhance an active program of recruitment and, as an element thereof, to focus particular attention on increasing the number of qualified female applicants for police officer positions in

accord with the purpose and objectives of this Decree. The Defendants shall endeavor to attract qualified women to the pool of police officer applicants in numbers reflective of those interested and qualified women who are available in the relevant labor market. As used herein, availability in the relevant labor market refers not only to the geographical area from which applicants are drawn but also to the persons in that area who possess the necessary qualifications, are interested in, and are available for entry level sworn positions in the Police Department.

Compliance with the recruitment obligations created by this Decree shall be judged by the Defendants' good faith implementation and administration of the recruitment program. Failure to attain any particular female applicant flow is not by itself a violation of the Decree, but may trigger an inquiry by the United States as to the Defendants' good faith implementation of the recruitment program.

5. The following elements shall be included in the Defendants' recruitment program for police officers:

- (a) The Defendants will develop feature articles about their efforts to recruit additional female police officers which will include application deadlines. Defendants will include in these articles or develop additional articles which set out specific examples

of the type of work done by the female police officers currently on the New Castle County Police Department. The County will develop such articles by distributing a press release containing such information to the news media (including print, television and radio news media) in the relevant labor market in a manner designed to result in its publication at an optimum time in relation to each application and selection process.

- (b) The Defendants shall make full use of free public service air time on radio and television during all police recruitment periods for the purpose of soliciting applications from women interested in police officer work.
- (c) During all police recruitment periods the Defendants shall issue appropriate press releases, announcements and brochures concerning employment opportunities with the New Castle County Police Department which emphasize that the County is seeking female as well as male applicants and shall make appropriate use of photographs of female police officers or models of female police officers.
- (d) The Defendants will assign sworn police officers to act as counselors to female applicants throughout the selection process.

6. The Defendants agree to fill sworn police officer positions by selecting and hiring qualified men and women in a nondiscriminatory manner from among qualified applicants who are recruited in accordance with the provisions of this Decree. The parties fully understand and agree that adoption and implementation of the terms of this Decree do not obligate the Defendants to hire unnecessary personnel or to hire any person who is not qualified by valid qualification standards. Except for the provisions of paragraph 8 below, nothing in this Decree is intended to require, authorize or permit defendants to hire anyone less qualified over a person more qualified because of sex or otherwise to grant any preference based upon sex in hiring.

7. The Defendants shall either discontinue use of the present physical aptitude test or revise it so that the physical aptitude test used in the future shall either have no adverse impact or, if it has an adverse impact, shall be job-related or otherwise be validated in accordance with the Uniform Guidelines on Employee Selection Procedures, 28 C.F.R. 50.14, 29 C.F.R. 51.53, and any amendments thereto ("Uniform Guidelines").

SPECIFIC RELIEF

8. The United States contends that the physical aptitude tests administered for police officer by the Defendants in

October, 1981 and October, 1983 had adverse impact against women and had not been validated in accordance with the Uniform Guidelines. Without admitting to the contentions of the United States and in settlement of this issue, the Defendants agree to the following: The Defendants shall make a good faith effort to contact all females who applied for a police officer position subsequent to August 17, 1981, and who were not hired. Such female applicants shall be informed of their right to reapply and to be considered along with other applicants for police officer positions, and shall be informed that the maximum age limit previously in effect will be waived for such female applicants and that the physical aptitude test has either been discontinued or revised to meet legal requirements. All female applicants who took and passed the written examination that accompanied each of the two administrations of the physical aptitude test (October 1981 and October 1983) and who are otherwise qualified to be police officers but can demonstrate they were denied positions solely because they did not pass the physical aptitude test, shall receive priority job offers for police officer vacancies prior to any other applicants. Any of these priority applicants not hired for the first class which is recruited after the entry of this Decree shall receive priority job offers in the second class recruited after the entry of this Decree. If a physical aptitude test which meets the requirements of paragraph 7 of this Decree is

administered by the Defendants, the priority job applicants may be required to pass that test before any job offer is made. All other provisions of the current County hiring practices except for the written examination, including but not limited to the oral board interview, background check, physical examination and psychological examination, shall also apply before any job offer is made. The female applicants to whom this paragraph 8 applies took and passed the 1981 and 1983 written examinations referred to above and are listed in Appendix A hereto. The Defendants agree to send each female applicant who is listed in Appendix A the letter attached as Appendix B. The above-referenced letters are to be sent within one week after Defendants announce recruitment of entry level police officers.

9. The terms of the relief to be provided to the charging party is set forth in a separate document entitled "Agreement and Release" which has been signed by the charging party and by counsel for the United States and the Defendants. The parties to the "Agreement and Release" shall comply with its terms.

RECORDKEEPING AND REPORTING

10. The Defendants shall retain for a period of four (4) years all records relating to the recruitment, selection and appointment of persons covered by this Decree, including

applications, identified by the sex of the applicant, as set forth in Section 4 of the Uniform Guidelines; the grounds for disqualification of those applicants not selected; medical and background investigation files; evaluations of applicants and employees; eligibility lists; and appointments and performance evaluations of probationary sworn police officers, with persons identified by sex. The Plaintiff shall have the right to inspect any and all such documents upon reasonable notice to the Defendants without further order of the Court. The Defendants shall make available such information or records as the Plaintiff requests in writing, provided such requests shall not be unduly burdensome.

11. For purposes of this Agreement, a reporting period shall run from January 1 through December 31 for each year. The first reporting period under the Consent Decree shall be from January 1, 1986, through December 31, 1986. Within thirty (30) days after the close of each reporting period, the Defendants shall provide to the Plaintiff:

- (a) A summary of recruitment activities during the reporting period.
- (b) The number of persons, by sex, appointed to police officer positions in the New Castle County Police Department.

- (c) The number of persons, by sex, who passed and failed each aspect of the selection process for police officer positions including the number of persons, by sex, who did not appear at each step in the process (e.g., written examination, physical aptitude test, oral board interview, etc.) during the reporting period.
- (d) The total number of persons in each sworn job classification in the New Castle County Police Department, by sex, as of the date in the reporting period on which the report is provided to the Plaintiff.
- (e) The number of new positions authorized in the next fiscal year and the number of vacancies, if any, which exist and can be filled by entry level police officers.
- (f) The number of persons, by sex, who were terminated or who resigned during the reporting period from entry level positions in the New Castle County Police Department while attending the police academy or during their probationary period. For each such person, the Defendants shall supply his or her name, address, telephone number, and a statement of the reason(s) for their termination or resignation.

The Defendants shall also provide to the Plaintiff, within thirty (30) days of the entry of this Decree, a report showing

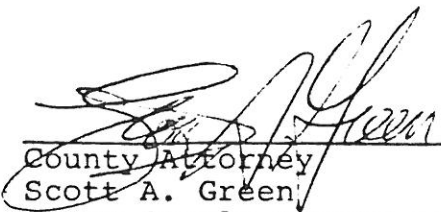
the number of persons by sex in each sworn job classification in the New Castle County Police Department as of the date of the entry of this Decree.

12. After four years from the date of entry of this Decree, the Defendants may apply to the Court for dissolution of this Decree, with notice to the Plaintiff. If Plaintiff has any objection to dissolution, it shall so advise Defendant within thirty (30) days of the filing of the application, and absent resolution of the objection by agreement of the parties within fifteen (15) days thereafter, the matter shall be heard and resolved by the Court. If no timely objection is made by Plaintiff, the Court shall dissolve this Decree forthwith.

13. The Court retains jurisdiction of this action during the pendency of the Decree for such further orders as may be appropriate. All matters arising from this Decree unresolved by the parties after thirty (30) days' notice to the opposing party may be submitted to the Court, by appropriate motion, for resolution.

14. The parties shall bear their own costs, including attorney's fees. Entered this ____ day of _____, 1985.

UNITED STATES DISTRICT JUDGE


County Attorney

Scott A. Green

New Castle County Law

Department

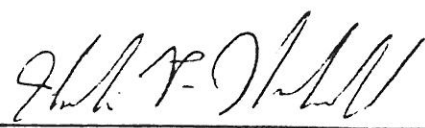
City/County Building

8th Floor

Wilmington, Delaware 19801

(302) 571-7530

Attorneys for Defendants


William B. Fenton

Melissa P. Marshall

Attorneys

Department of Justice

Washington, D.C. 20530

(202) 633-3861


William C. Carpenter, Jr.

United States Attorney

Charlene Davis

Assistant United States
Attorney

Attorneys for Plaintiff

APPENDIX A

Elizabeth M. Barnhill
Kathleen A. Bucher
Antonia M. Cook
Barbara Ellis
Rhonda Frazier
Vessa Fulton
Bobbi J. Gerhardt
Deborah A. Gonzales
Michele D. Hinson
Gail L. Hunter
Kathleen M. Kelly
Chris A. Lawrence

Margaret McAlevy
Patricia A. McKeown
Janice L. Parker
Laurie Pelletier-Giebner
Leslie Spinella
Mary J. Starobynski
Beverly K. Taylor
Carol L. Teague
Penny C. Thomas
Theresa A. Weeks
Sharon A. Zayas

APPENDIX B

Dear _____:

On _____, 1985, the County of New Castle and its Police Department entered into a Consent Decree with the United States Department of Justice. The Decree provides, among other things, that female applicants who took and passed one or both of the written examinations administered subsequent to August 17, 1981, and who are otherwise qualified to be police officers, will receive priority job offers for police officer vacancies. Our records reflect that you took and passed the written exam administered on _____ and are therefore one of the women potentially eligible for such priority hire status.

You are invited to fill out and submit the enclosed application form. The maximum age limit of _____ previously in effect has been waived for you and for the other female applicants eligible for priority hire status.

You will however, be expected to pass all of the current County selection procedures except for the written examination before a job offer can be made. These procedures include an oral board interview, background check, physical examination and psychological examination. A physical aptitude test will be given only if it has been revised to eliminate any potential adverse impact on female applicants or has otherwise been validated as set forth in the Consent Decree.

The New Castle County Police Department is committed to increasing the number of female police officers on its force. We therefore urge you to fill out and return the attached application if you are still interested in a police officer position.

The application deadline is _____.
If you have any questions, please feel free to contact _____
_____ at 302-_____.

Sincerely,