

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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FRANK RICCI, ET AL.	:	
plaintiffs	:	
	:	
v.	:	NO: 3:04-CV-1109 (JBA)
	:	
JOHN DESTEFANO, JR, ET AL.	:	
defendants	:	NOVEMBER 13, 2009
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DEFENDANT’S PROPOSED ORDER

In accordance with this Court’s November 5, 2009 Order, the Defendant, the City of New Haven, hereby submits the following proposed order regarding promotions:

WHEREAS pursuant to the Charter of the City of New Haven, Connecticut (“the City”), and the Rules of the New Haven Civil Service Board (“the Civil Service Board”) promotions within the City’s civil service system shall be made based exclusively on the results of competitive examinations; and

WHEREAS, in November and December of 2003, the City administered promotional examinations for the ranks of Lieutenant and Captain in the New Haven Department of Fire Services (“NHFD”); and

WHEREAS in January, February and March 2004 the Civil Service Board held a series of public hearings regarding the results of such promotional examinations; and

WHEREAS, on March 18, 2004, the Civil Service Board voted 2-2 on the question of whether to certify the results of said promotional examinations, effectively ending consideration of the use of said results to make NHFD promotions; and

WHEREAS, the plaintiffs brought this action pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII”), *inter alia*; and

WHEREAS, the United States District Court for the District of Connecticut (“District Court” or this “Court”) entered judgment in favor of the City on the Title VII claim; and

WHEREAS, the Second Circuit Court of Appeals (“Second Circuit”) affirmed the entry of judgment in favor of the City on the Title VII claim; and

WHEREAS, the Supreme Court of the United States (“Supreme Court”) held that an “employer must have a strong basis in evidence to believe that it will be subject to disparate-impact liability if it fails to take the race-conscious, discriminatory action”; and

WHEREAS, the Supreme Court further held that “the City lacked a strong basis in evidence to believe it would face disparate-impact liability if it certified the examination results”; and

WHEREAS, the Supreme Court also ruled “[i]f, after it certifies the test results, the City faces a disparate impact suit, then in light of our holding today it should be clear that the City would avoid disparate impact liability based on the strong basis in evidence that, had it not certified the results, it would have been subject to disparate treatment liability”; and

WHEREAS, the Supreme Court reversed the judgment of the Court of Appeals on the Title VII claim and remanded the case to the Second Circuit for further proceedings consistent with its opinion; and

WHEREAS, the Second Circuit remanded the case to the District Court for further proceedings consistent with the opinion of the Supreme Court; and

WHEREAS, consistent with the opinion of the Supreme Court and the remand order of the Second Circuit, the City comes before this Court seeking an order from this Court to remedy the Title VII violation found by the Supreme Court; and

WHEREAS, the City believes such an order is necessary and appropriate to effectuate ruling of the Supreme Court in this matter.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

- A. The City's Chief Examiner shall prepare an eligible list for the rank of NHFD Lieutenant based on the results of the 2003 promotional examination. Said list shall set forth in rank order the names and scores of all applicants who passed said examination.
- B. The City's Chief Examiner shall prepare an eligible list for the rank of NHFD Captain based on the results of the 2003 promotional examination. Said list shall set forth in rank order the names and scores of all applicants who passed said examination.
- C. The Civil Service Board shall certify said eligible list for the rank of NHFD Lieutenant.
- D. The Civil Service Board shall certify said eligible list for the rank of NHFD Captain.
- E. This Court's earlier confidentiality order limiting access to the identifiable scores of all passing candidates from the 2003 examinations (See Doc. # 14, 15, 24, 25, 57 and 66) shall be vacated as of the date of certification of the eligible lists.
- F. The certified eligible lists shall be considered to have been effective from March 18, 2004 through March 18, 2006.
- G. Using the certified eligible lists, making promotions in rank order, the City's Board of Fire Commissioners will promote those plaintiffs who would have been eligible for promotion to the positions of NHFD Lieutenant and Captain prior to the expiration of the eligible lists.
- H. This Court shall have continuing jurisdiction over the promotion of the plaintiffs.

CERTIFICATION

This is to certify that on November 13, 2009, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court(s) electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

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/s/

Richard A. Roberts