

Proposed DOJ Consent Decree – Summary of Current Draft

May 5, 2014

Paragraph Reference in Proposed Decree	Subject	Summary
Part I.	Background	Describes the general nature of the DOJ's lawsuit and its claims against the City in the lawsuit.
Part II.	Stipulated Facts	Describes the background of the hiring process at AFD and describes the results of the 2012 and 2013 hiring processes.
Part III.A.	Definitions & Parties	Identifies the DOJ and the City as the parties to the lawsuit, and references a "Definitions" section in an Appendix to the Decree.
Part III.B.	Purposes of the Decree	Language common to DOJ consent decrees, this section recites that the purposes of Decree are to ensure City does not violate Title VII, uses lawful selection devices, and provides appropriate relief to qualified firefighter applicants from 2012.
Part III.C.1.	General Injunctive Relief	Provides City is prohibited from using selection devices that have adverse impact on African American and Hispanic applicants.
Part III.C.2.	Interim Hiring Process	Describes procedure to complete the 2013 hiring process. This includes using scores from all five parts of the cognitive test actually used in 2013, but not using the scores from the non-cognitive test questions. Applicants are rank-ordered based on a weighted composite score combining the scores from the cognitive test and the 2013 oral test scores as originally weighted. AFD may hire up to 90 cadets from this process, provided that cadet academies must start within 1 year of the date the consent decree is signed by the judge at fairness hearing #1 (see Part III.D., below).
Part III.C.3.	Recruitment of Firefighters	Provides that City will submit a fire cadet recruitment plan to DOJ within 60 days after Judge signs Decree, and requires specific types of recruitment advertising.
Part III.C.4.	Decree Compliance Officer	Requires City to designate an individual to be responsible for ensuring compliance with the Decree.
Part III.C.5.	Claims Administrator	Requires City to hire an (unspecified) outside firm to administer the notices for fairness hearings and other court proceedings required under the Decree.
Part III.C.6.	Use of Lawful Selection Procedures	Requires DOJ approval of any changes to a selection device or process with before the City implements it so long as Decree is in effect. Minimum notice period to DOJ is 60 days before implementation; DOJ has 15 business days to object. Court resolves any disputes between the parties.

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Part III.D.	Fairness Hearing on Consent Decree Terms	This is fairness hearing #1, in which the issue is whether the Judge should sign the Decree. Minimum notice period for this hearing is 100 days after lawsuit is filed, but will probably be longer. Extensive pre-hearing process requiring notice and an opportunity to object at the hearing sent to: (a) 2012 African American and Hispanic applicants who were not hired; (b) all 2013 applicants; (c) all current firefighters and cadets; and (d) the firefighters' union.
Part III.E.	Entry of Consent Decree	Provides that the Court will enter the Decree after fairness hearing #1 and following resolution of any objections filed.
Part III.F.1.	Settlement Funds	Requires City to set aside \$780K in its payroll account to satisfy backpay awards for 2012 claimants.
Part III.F.2.	Monetary Awards from Settlement Fund	Requires City to pay backpay awards from settlement fund established above, make appropriate tax withholdings from the backpay awards, and remit payroll taxes as required by law. City pays employer's share of payroll taxes (in addition to \$780K settlement fund).
Part III.F. 3.	Preliminary Eligibility for Individual Relief	Establishes claims procedure for 2012 African American and Hispanic candidates who could receive backpay and/or priority hiring relief under the Decree. Requires notice to all potential claimants.
Part III.F.4.	Potentially Eligible Claimants to File Claims	Requires 2012 candidates who seek backpay or priority hire relief to submit a written "Interest-in-Relief" form.
Part III.F.5	Priority Hiring and Retroactive Seniority	Provides method for deciding which 2012 claimants would be entitled to the 30 priority hire positions (12 African American, 18 Hispanic). In summary, City will administer the new hiring process designed under Part III.C.6, above, to 2012 African American and Hispanic claimants who indicate an interest in a priority hire during the claims procedure. Separate eligibility lists will be developed for the African American and Hispanic candidates, which will feed into the next two fire cadet academies. A priority hire who makes it through cadet academy will receive retroactive seniority.
Part III.F.6.	Eligibility for Backpay	Provides that DOJ will determine which 2012 claimants will receive backpay awards, and in what amounts. [Note: City's liability capped at \$780K.]
Part III.F.7	Backpay Awards List	Provides that DOJ will compile a list of those 2012 candidates whom it determines are entitled to a backpay award and file the list with the Court.

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Part III.F.8.	Fairness Hearing on Individual Relief	This is fairness hearing #2, in which the issue will be whether the Court should approve the list of 2012 candidates to receive backpay as filed by DOJ, and approve the list of 2012 candidates who will compete for priority hire positions and retroactive seniority. This fairness hearing is preceded by an extensive notification process to the claimants from the 2012 hiring process who filed Interest-in-Relief forms earlier, and an opportunity for these claimants to object to their individual relief awards.
Part III.F.9.	Approval of Individual Relief Awards	Provides that after resolving any objections filed by anyone, the Court will approve the backpay awards list and priority hiring candidate list for the 2012 claimants.
Part III.F.10.	Notice of Individual Awards	Requires notice to all 2012 candidates who receive a backpay award and/or priority hire award, and provides that anyone receiving an award will have to sign and return a release of claims form in order to get their award.
Part III.G.	Records Retention	Provides that the City will retain all records relevant to AFD hiring during the term of the Decree, and will make these available to DOJ upon request.
Part IV.	Dispute Resolution	Provides a process for resolving disputes concerning application or administration of the Decree, including informal processes, lawsuit-type depositions and written questions, with ultimate resolution by the Court if parties cannot agree.
Part V.	Duration of Decree	Provides that Decree will remain in effect for min. period of four years, and may be extended for up to an additional four years on request of City or DOJ for "good cause shown."
Part VI.	Costs and Fees	Provides that each party will bear its own costs and fees for the lawsuit.
Part VII.	Miscellaneous Provisions	Provides: City and DOJ will meet quarterly during term of the Decree; the Decree will control if in conflict with a state or local law; and contact information for the City and DOJ for notice purposes under the Decree.